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# INTERNATIONAL REVIEW

## OF THE RED CROSS

JAG SCHOOL

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The *International Review of the Red Cross* invites readers to submit articles relating to the various humanitarian concerns of the International Red Cross and Red Crescent Movement. These will be considered for publication on the basis of merit and space.

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## REFUGEES AND CONFLICT SITUATIONS

*The protection of refugees and displaced persons is guaranteed by many universal and regional instruments of international law. The rules are there, but for several years the humanitarian organizations charged with implementing them have constantly had to face new situations brought about by the scale and frequency of mass population movements, especially in the Third World, and new types of violence which affect both the status and the possibilities for protection of the people concerned. Very often, the solutions arrived at by these bodies have taken the form of assistance rather than protection, the one not always easily distinguishable from the other.*

*To what extent, therefore, do legal rules provide protection for “traditional” refugees and for people who, although not refugees, are forced to leave their country because of armed conflict or serious internal disturbances? How have humanitarian protection and assistance organizations adapted to reality in this regard?*

*The growing complexity of the problems facing refugees and displaced persons, especially in situations of conflict, calls for increasingly close co-operation between the humanitarian bodies responsible for protecting and assisting them. What can we say in 1988 about the respective mandates of these organizations, the complementarity of their activities and the degree to which they co-operate?*

*The International Review of the Red Cross, devoting this issue to the theme “Refugees and conflict situations”, asked the United Nations High Commissioner for Refugees, the President of the International Institute of Humanitarian Law, the ICRC Legal Division and a professor of law at Chulalongkorn University in Bangkok to share with its readers their thoughts about these matters, which are constant concern to the international community.*

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*Jean-Pierre Hocké, United Nations High Commissioner for Refugees, focuses in his article "Protection by action" on the changing nature of UNHCR operations since the institution was created in 1951. He observes that the refugee problem is such that refugees can no longer be protected unless that protection goes hand in hand with some form of assistance. In fact, combining protection and assistance has gradually become a necessary condition for implementation of the UNHCR mandate.*

*This combining of protection and assistance is already the hallmark of Red Cross action in armed conflicts. The two concepts are and must remain inextricably linked if victims of armed conflicts are to be defended and human life and dignity respected.<sup>1</sup>*

*The similarity between UNHCR and ICRC protection and assistance activities has a legal basis that it might be useful to recall and above all to examine in the light of the social and political changes of recent years.*

*ICRC activities for refugees are reviewed from the legal standpoint by Françoise Krill, of the ICRC Legal Division. Her detailed study covers all the situations that could be encountered by refugees, who are regarded as civilians and protected as such by international humanitarian law, and analyses the legal mechanism, providing such protection in time of armed conflict. She gives special attention to the progress made in Protocol I of 1977 towards the protection of refugees, whether civilians in the power of a party to the conflict or civilians suffering the effects of the hostilities (for example, in the context of military attacks on refugee camps).*

*Mrs. Krill also explains the legal basis for ICRC action for refugees, the better to define the ICRC's specific role in this regard: the ICRC intervenes on behalf of refugees when their situation is related to a conflict; hence the ICRC's recognized mandate to protect people displaced within a country affected by a conflict.*

*Her article is an apt introduction to that written by Professor Vitiit Muntarbhorn, from Chulalongkorn University in Bangkok. This author examines the mandates of the International Red Cross and Red Crescent Movement, the ICRC in particular, and of the UNHCR in the field of protection and assistance for refugees in time of armed conflict or internal disturbances: he considers the similarities in the ICRC and UNHCR mandates, on which points they converge and on which they differ. He also reflects on the changes that have come about in those mandates to keep pace with new forms of conflict and disturbances. The author*

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<sup>1</sup> See Jean-Luc Blondel, "Assistance to protected persons", *International Review of the Red Cross*, No. 260, September-October 1987, pp. 451-468.



repeats that the tasks of the two institutions are complementary: while the UNHCR has seen its mandate extended to displaced persons outside their country of origin, it does not yet cover, within the strict meaning of the law, persons displaced within their own country of origin, this situation falling within the ICRC's mandate in time of armed conflict or internal disturbances.

There remain ill-defined situations, such as that of refugees in border areas who are exposed to armed attacks. Here, the law is unclear as to the respective mandates of the UNHCR and the ICRC. But marked progress was made during the Twenty-fourth International Conference of the Red Cross in 1981: a resolution was adopted which clarified the situation by emphasizing the complementary nature of the two institutions' activities and urging them to consult each other and to co-ordinate their assistance operations.<sup>2</sup>

In spite of these real achievements, and in order to limit possible disagreement on the meaning of the terms "refugees" and "displaced persons" and to deal with any new situation the victims of which do not come within a well-defined category but nonetheless need protection and assistance, the author feels it would be wise to draw up a set of basic principles on humanitarian protection and assistance, based on current legislation and on practical experience. These principles would serve as guidelines for humanitarian operations.

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The complementarity of humanitarian law and refugee law has also been studied at the International Institute of Humanitarian Law. Its President, Professor Jovića Patrnogic, explains the workings of humanitarian law—a well-established branch of law—and of refugee law, which is still rather rudimentary and which he would like to see more strictly codified to encompass modern problems.

While Professor Patrnogic readily accepts that developments in what he calls fundamental human laws (human rights law, international humanitarian law, international refugee law) are encouraging, he observes that respect for them has run into several major obstacles. The most serious of these are an exaggerated interpretation of the notion of

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<sup>2</sup> Twenty-fourth International Conference of the Red Cross, Manila, 1981, Resolution XXI: "International Red Cross aid to refugees".

*State sovereignty, the erosion of the principle of non-refoulement and grave breaches of the law relating to refugees and displaced persons.*

*This highlights the delicate relationship between politics and humanitarian issues. As J.-P. Hocké puts it, "Although there can be no humanitarian solution without a political one, humanitarian action can and must be taken pending a political solution. In this respect, humanitarian action, precisely because it is apolitical, can help to shape and foster a political solution". Humanitarian action, whether taken by the ICRC or the UNHCR, to name but those two, becomes a constant struggle to influence politics and create the conditions for a political solution. Here we can quite aptly cite the President of the ICRC at the opening of the Second World Red Cross and Red Crescent Conference on Peace (Åland/Stockholm, 1984): "Humanitarian action alone cannot solve anything and cannot even claim to provide definitive solutions to the fundamental problems which are at the source of conflicts, since the problems are political and thus outside the humanitarian terms of reference. Nevertheless, this humanitarian action, if properly understood and 'intelligently used' by governments, may allow them a breathing space in which to seek—in a spirit of peace and conciliation—political solutions which will themselves eradicate the humanitarian problems".<sup>3</sup>*

*As Professor Patrignone stresses, a humanitarian strategy is absolutely necessary, now more than ever. A framework for it has already been sketched by the complementary nature of the mandates and activities of the ICRC and the UNHCR; it must proceed via the promotion of international humanitarian instruments, the methodical dissemination of knowledge of the basic principles of humanitarian law and refugee law, and the continued adaptation of rules of law to new needs. This is the price of guaranteed protection for refugees and the victims of armed conflicts and other conflict situations.*

#### *The Review*

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<sup>3</sup> "Opening message to the Second World Red Cross and Red Crescent Conference on Peace", by Alexandre Hay, President of the ICRC, *IRRC*, No. 243, November-December 1984, p. 325.

# Protection by Action

by **Jean-Pierre Hocké**

The Office of the United Nations High Commissioner for Refugees (UNHCR) was set up in 1951 with the main function of providing protection for refugees. This mandate corresponded to the task immediately confronting it, that of solving the refugee problem affecting Europe in the aftermath of the Second World War.

During the past 35 years, the international community—and consequently the refugee problem—has undergone profound changes. UNHCR, which is an integral part of the international community and, as an organ of the United Nations General Assembly is an operational component of the UN system, has likewise evolved so as to be able to accomplish its mission in all circumstances in a constantly changing world.

In concept, the UNHCR is the same today as it was in 1951; it remains the guardian of the universal principle of asylum as defined by the international community. The protection of refugees remains the cornerstone of this humanitarian institution and the essence of the mandate with which the international community has entrusted me as its head.

It is therefore not the principle itself on which the UNHCR was founded, but the implementation of this principle that has changed over the past 35 years and will continue to change in the future.

From the mid-fifties, the hub of the refugee problem began to shift from the industrialized to the developing countries. This new context—the concentration of refugees in the poorest countries—brought about a situation in which protection could no longer be ensured or would even lose all purpose unless it was combined with assistance. This dual protection/assistance approach has enabled UNHCR to match up to the new challenges that emerged with decolonization and that now take the form of a worldwide refugee population of some 12 million, with the familiar crisis areas of Afghanistan, the Horn of Africa, southern Africa, Central America and South-East Asia.

Acting on its conviction that legislation, by definition, inevitably lags behind practice and that codification is but the *de jure* recognition of a *de facto* reality, the UNHCR owes its success in meeting this challenge to the skill with which it has combined protection and assistance in what I would call “operational efficiency”.

To be *operational* does not mean distributing relief. It means being *present* in the broadest sense of the word, being right there where refugees are in need and giving protection a practical rather than a purely theoretical connotation by providing material assistance as well.

Being operational means integrating protection and assistance in a single process of *protection by action*.

For this purpose the Protection Division has been renamed Division of Refugee Law and Doctrine and the UNHCR operational bodies—the Regional Bureaux—have been made responsible for the practical application of protection, thus reaffirming the principle that the UNHCR can truly fulfil its mandate only if the protection and assistance functions are inextricably linked.

This mandate is universal, despite that fact that not all States have yet acceded to the Conventions, for beyond these instruments the asylum principle is recognized, if not in every constitution, at least in the body of laws, rules and customs governing even the simplest of societies. It is precisely because the rights of refugees constitute an integral part of human rights legislation, and because persecution and violence create the same victims, that UNHCR has not only the right but also the duty to act wherever its humanitarian mandate demands that it be present.

UNHCR’s presence is, of course, determined not in a vacuum but in a political context.

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The refugee problem—which may be called a man-made disaster—is a result of war, political crises and violence. It follows that any practical, and therefore operational, humanitarian action must fulfil two conditions: firstly, it must take into account every element of the political equation that led to the crisis and, secondly, it must avoid becoming a prisoner of that equation. Successful humanitarian action thus hinges on political neutrality and avoidance of confrontation. Although there can be no humanitarian solution without a political one, humanitarian action can and must be taken pending a political solution. In this respect, humanitarian action, precisely because it is apolitical, can help to shape and foster a political solution.

For humanitarian action, political neutrality is therefore both a prerequisite to success and a means of influencing political decisions which, by their very nature and virtually by definition, are in contradiction with humanitarian goals. It is rare that reasons of state stem from considerations unrelated to the balance of power.

\* \* \*

In this context, humanitarian action inevitably becomes a permanent struggle. Too often, UNHCR alone raises its voice against flagrant violations of the right of asylum. Too often also, the authorities concerned turn a deaf ear to its appeals. Unilateral measures are undoubtedly the prerogative of States, but when applied to refugees in particular, they are diametrically opposed to the ideal of international solidarity which inspired the founders of humanitarian law, that great affirmation of human rights.

Faced with this reality, UNHCR must not only endeavour to ensure that States respect refugees' rights, but also, beyond the daily struggle, strive to foster awareness of what is at stake. I am deeply convinced that respect for humanitarian ideals is actually in the political interest of States, for the violation of these ideals invariably turns against the protagonists of reasons of state and ill serves those who have shortsightedly sacrificed their principles in deference to immediate expediency.

In such situations, the respective mandates of UNHCR and the ICRC meet and complement each other. Refugees and prisoners are often created by the same event. Faced with human rights violations—in whatever guise they occur—it behoves the humanitarian front, composed not only of our two organizations, but also of all the voluntary agencies, and indeed all men and women of goodwill, to unite and speak out.

**Jean-Pierre Hocké**

*United Nations High Commissioner  
for Refugees*

**Jean-Pierre Hocké**, of Swiss nationality, a graduate of Lausanne University with a degree in Economic and Social Science, joined the ICRC in 1968. As Director of the Operations Department from 1973 to 1985 and a member of the ICRC Directorate from 1981 to 1985, Mr. Hocké launched several large-scale operations in connection with conflicts in the Middle East, Cyprus, Angola, Viet Nam, Lebanon, Kampuchea, Iran-Iraq, Central America and Ethiopia. He was elected United Nations High Commissioner for Refugees by the United Nations General Assembly in December 1985.

The *Review* has published several articles by Mr. Hocké on protection and assistance to victims of armed conflicts, during his time in office with the ICRC.

# ICRC action in aid of refugees

by **Françoise Krill**

## I. THE REFUGEE AS A PERSON PROTECTED BY INTERNATIONAL HUMANITARIAN LAW (IHL) <sup>1</sup>

### 1. General points

The refugee does not enjoy special protection in IHL except in several provisions which will be considered below, nor is there any particular definition of a refugee as a person protected by IHL. The refugee is above all a civilian person and is protected as such by the relevant provisions of IHL. The sole criterion, for the purposes of the Fourth Geneva Convention, is in fact the absence of protection by any government. The term “refugee” is thus given a broad connotation. In international public law there are two defined categories of refugee, to which a third category is usually added by analogy. They are:

#### 1.1. Refugees fleeing persecution

These are refugees as defined in the United Nations Convention relating to the Status of Refugees, of 28 July 1951, its Protocol of 31 January 1967 and the Statute of the Office of the United Nations High Commissioner for Refugees (UNHCR).

According to Article 1, A(2), of the 1951 Convention, the term “refugee” applies to any person who, *“as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the*

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<sup>1</sup> By IHL we are referring here only to international humanitarian law applicable in armed conflicts.

*protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it”.*

The same Article, under B(1), stipulates that “*events occurring before 1 January 1951*” shall be understood to mean either “*in Europe*” or “*in Europe or elsewhere*”, as the States prefer.

The 1967 Protocol is intended to remove the two restrictions of time and geographical location.

To sum up, refugees as defined here are persons who flee with a well-founded fear of persecution and who are outside their country.

### **1.2. Refugees owing to armed conflict and other disturbances**

The definition may be found both in the Convention of the Organization of African Unity (OAU) governing the Specific Aspects of Refugee Problems in Africa, adopted on 10 September 1969, and in certain United Nations resolutions.

The OAU Convention states that the term “*refugee*” applies, in addition to refugees fleeing persecution as defined by the 1967 Protocol, “*to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality*”.

To sum up, these are persons who seek refuge from armed conflict or other disturbances and who are outside their country.

### **1.3. Displaced persons**

This term means persons who flee armed conflict or other disturbances but who remain inside their country. Having crossed no international frontier, they are not considered refugees by international law, but in common usage are nonetheless regarded as such. Persons to whom neither refugee definition applies, or who do not come under the protection of the UNHCR, are sometimes also referred to as displaced persons, even when they are outside their country.

To come back to IHL, its protection of civilians is twofold:

- protection of civilians who are in the power of the enemy;
- protection of civilians against the effects of hostilities.

## 2. The refugee as a civilian person in the power of a Party to the conflict

### 2.1. Special protection afforded by certain provisions of the Geneva Conventions of 1949 (Fourth Convention)

The Fourth Convention provides for mainly two kinds of situation:

- aliens in the territory of a Party to the conflict;
- inhabitants of an occupied territory.

Let us now examine the different cases which may be found, depending on which of the two situations the refugee finds himself in:

**(a) Aliens in the territory of a Party to the conflict** (See Annex 1):

- Refugees who are nationals of an enemy State enjoy the special protection afforded by Article 44, which reads as follows:

*“In applying the measures of control mentioned in the present Convention, the Detaining Power shall not treat as enemy aliens exclusively on the basis of their nationality de jure of an enemy State, refugees who do not, in fact, enjoy the protection of any government”.*

- In the absence of diplomatic representation, refugees who are nationals of a neutral State are protected under Article 4, para. 1; conversely, in the event of diplomatic representation they are not protected (Article 4, para. 2). Here there is a deficiency, which is fortunately remedied by Article 73 of 1977 Protocol I, as we shall see below. But first let us come back to Article 4 of the Fourth Convention:

*“1. Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals”.*

*“2. Nationals of a State which is not bound by the Convention are not protected by it. Nationals of a neutral State who find themselves in the territory of a belligerent State, and nationals of a co-belligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are”.*



- In the absence of diplomatic representation, refugees who are nationals of a co-belligerent State are protected under Article 4, para. 1; conversely, in the event of diplomatic representation they are not protected (Article 4, para. 2). Here, too, there is a deficiency remedied by Protocol I, Article 73.

**(b) Occupation** (See Annex 2):

- Refugees who are nationals of an enemy State are afforded special protection under Article 70, para. 2:

*“Nationals of the Occupying Power who, before the outbreak of hostilities, have sought refuge in the territory of the occupied State, shall not be arrested, prosecuted, convicted or deported from the occupied territory, except for offences committed after the outbreak of hostilities, or for offences under common law committed before the outbreak of hostilities which, according to the law of the occupied State, would have justified extradition in time of peace”.*

This provision calls for clarification on a few points. It protects nationals of the Occupying Power who sought refuge before the conflict began. Moreover, it is designed to limit the jurisdictional capacity of the Occupying Power and to safeguard the continuity of the right of asylum. The protection of the refugee does, however, have its limits, namely the security of the Occupying Power and criminal offences.

- Refugees who are nationals of a neutral State are protected under Article 4 para. 1.<sup>2</sup>
- In the absence of diplomatic representation, refugees who are nationals of a co-belligerent State are protected under Article 4, para. 1; conversely, in the event of diplomatic representation they are not protected (Article 4, para. 2). In the latter case, there is again a deficiency remedied by Protocol I, Article 73.

## **2.2. Special protection afforded by Article 73 of 1977 Additional Protocol I**

### **2.2.1. The wording of Article 73**

*“Persons who, before the beginning of hostilities, were considered as stateless persons or refugees under the relevant international instruments*

<sup>2</sup> Fourth Geneva Convention of 1949 relative to the protection of civilian persons in time of war: Commentary published under the general editorship of J. Pictet, Geneva: ICRC, 1958, pp. 48-49.

*accepted by the Parties concerned or under the national legislation of the State of refuge or State of residence shall be protected persons within the meaning of Parts I and III of the Fourth Convention, in all circumstances and without any adverse distinction.”*

### **2.2.2. Remarks**

Article 73 applies only to persons considered as stateless or refugees “*before the beginning of hostilities*”. These are stateless persons or refugees either under “*the relevant international instruments*” or “*the national legislation of the State of refuge or State of residence*”. “*International instruments*” should be understood as being all official documents adopted by an international organization, regardless of whether they are mandatory; these would be mostly treaties, conventions, agreements, protocols, resolutions, recommendations, declarations, etc., i.e., any instrument which is “*accepted by the Parties concerned*” and contains a definition of refugee or stateless person (for example, the OAU Convention of 1969). The temporal restriction “*before the beginning of hostilities*” in effect limits the scope of application *ratione personae* of this article to refugees who have fled persecution. Other refugees, persons displaced by a conflict or refugees fleeing from one, do however benefit from the protection and assistance provided for in the Fourth Convention and in Article 75 of Protocol I. Moreover, they are also covered by the relevant rules concerning refugees which remain applicable in spite of the conflict, just as they do for other refugees.

### **2.2.3. The effects of Article 73**

(a) The Fourth Convention is applicable to refugees and stateless persons inasmuch as it covers the whole of the civilian population in the territory of the Parties to a conflict, without adverse distinction, including that of nationality. Furthermore, protection is accorded “*in all circumstances*”, i.e., in all situations in which humanitarian law is applicable, even if only one of its provisions is applicable.

(b) Stateless persons are already protected by the Fourth Convention. They are not affected by the exceptions to the general rule which are set out in paras. 2 and 4 of Article 4. Thus, Article 73 makes only formal improvements to the law in force.

(c) As regards refugees, Article 73 improves their situation in more than one way. By virtue of Article 73, the following are now covered by the Fourth Convention:

- Refugees who are nationals of a State not bound by the Fourth Convention (previously they were not covered; see Article 4, para. 2).
- Refugees who are nationals of a neutral State which has diplomatic representation in the State in whose territory these refugees find themselves (previously they were not covered; see Article 4, para. 2).
- Refugees who are nationals of a co-belligerent State which has diplomatic representation (previously they were not covered; see Article 4, para. 2).
- Refugees in occupied territory who are nationals of the occupying State (previously they were covered only by Article 70, para. 2, and not by the other provisions of the Fourth Convention).
- These refugees, however, must meet two conditions:
  - be refugees in the terms of the relevant international instruments accepted by the Parties concerned or the national legislation of the State of refuge or the State of residence;
  - must have been deemed as such before the beginning of hostilities.

### **2.3. Provisions prohibiting forced displacement of the population**

Article 45, para. 4, of the Fourth Convention states that “*in no circumstances shall a protected person be transferred to a country where he or she may have reason to fear persecution for his or her political opinions or religious beliefs*”.

Article 49, para. 1, of the same Convention stipulates that “*Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive*”. However, total or partial evacuation is possible, but solely for the cases mentioned in this Article and according to very strict conditions.

### **2.4. Other important provisions of the Fourth Convention and Protocol I**

Other provisions, though more general, give certain powers and rights to the ICRC enabling it to take action to help refugees. These are Articles 25 (family news), 26 (dispersed families), 140 (Central Tracing Agency) and 143 (visits to all protected persons) of the Fourth Convention, as well as Articles 33 (missing persons) and 74 (reunion of dispersed families) of Protocol I.

### **3. The refugee as a civilian victim of the effects of hostilities**

The rules of international law which impose limitations on the conduct of hostilities stem from the Hague Conventions of 1899 and 1907. A large number of them have become part of customary law and are expressly reaffirmed and developed in Part IV of Protocols I and II. Part II of the Fourth Convention also protects refugees against certain effects of hostilities.

This protection is conferred by rules which include:

- the creation of protected zones (Fourth Convention, Article 15, and Protocol I, Article 60);
- relief consignments (Fourth Convention, Article 23, Protocol I, Article 70, and Protocol II, Article 18);
- special measures relating to child welfare (Fourth Convention, Article 24);
- the prohibition of attacks or threats against civilian populations (Protocol I, Articles 48 and 51, paras. 1 and 2; Protocol II, Article 13);
- the obligation to take precautions to spare the civilian population (Protocol I, Articles 57 and 58);
- prohibition of the destruction of objects indispensable to the survival of the civilian population, such as foodstuffs and agricultural areas (Protocol I, Article 54, and Protocol II, Article 14);
- respect for civil defence organizations (Protocol I, Articles 61 to 67).

It is worth pausing for a moment to consider these rules in relation to military attacks on refugee camps, which have occurred repeatedly since 1978. This relatively recent phenomenon has been on the increase in recent years and has claimed innumerable civilian victims. The attacks on the Sabra and Chatila camps in Lebanon in 1982 and again in 1985 claimed hundreds of lives. However the camps in Lebanon are far from being the only examples. Similar acts continue to be committed in Angola, Sudan, Honduras, Pakistan, Thailand, Botswana and elsewhere.

Two aspects are particularly disquieting:

- the siting of these camps in dangerous combat zones;

— the presence of combatants within strictly civilian groups.

With regard to the first problem, Article 51, para. 6, and above all Article 58 of Protocol I offer a solution.

As for the second problem, the presence of combatants within strictly civilian groups of refugees does not deprive the latter of all protection. For one thing, indiscriminate attacks which also and *a fortiori* strike civilians remain prohibited (Protocol I, Articles 51 and 57). In addition, under Article 50, para. 3, of Protocol I, the presence of individual combatants within a civilian population and, therefore, also their presence within a population consisting of refugees does not deprive that population of its civilian status.

Unfortunately, these provisions, which should serve to protect refugees and displaced persons who find themselves in areas of armed conflict, are not applied under the pretext that Protocol I does not yet have the status of universally recognized law or that there is no armed conflict in the meaning of international humanitarian law.

It is precisely in such cases that the conclusions of the UNHCR Executive Committee (38th session, October 1987) can be invoked to provide better protection for refugees.

#### **4. Non-international armed conflict**

In such a situation the refugee belongs *de facto* to the category of “*persons displaced within their own country*”. He is protected by the fundamental guarantees (Article 3 common to the four Geneva Conventions of 1949) relating to the treatment of persons not taking part in hostilities. Protocol II of 1977 supplements and extends this provision. In other words, such people are entitled to have their lives and physical and moral integrity respected. In particular, duress, cruelty, torture, collective punishments, reprisals, pillage and the taking of hostages are prohibited. For criminal offences related to the armed conflict, such persons are entitled to be tried by an impartial and regularly constituted court offering the essential legal guarantees. In addition, the wounded and sick must be collected and cared for.

## II. THE REFUGEE AS A PERSON BENEFITING FROM ICRC ACTION

### 1. General points

In order to be eligible to benefit from ICRC action, the refugee must in principle be the victim of internal or international armed conflict. Whether he belongs to the category of persons protected by IHL is not, however, crucial. The ICRC's right of initiative, which will be examined below, makes it possible to intervene in situations which are not covered by IHL or whose legal definition is in dispute. It goes without saying that if the refugee belongs to the category of protected persons, he will in any case be entitled to benefit from ICRC action.

### 2. Legal bases for ICRC action in aid of refugees

The legal bases for activities carried out by the ICRC in aid of refugees are to be found in the instruments of IHL (the 1949 Geneva Conventions and the 1977 Additional Protocols), in the Statutes of the International Red Cross and Red Crescent Movement and in the Statutes of the ICRC. In addition, various Resolutions adopted by the International Conferences of the Red Cross deal with certain specific aspects of this question.

#### 2.1. The instruments of IHL

##### (a) *Explicitly assigned competences*

On the basis of Article 143 of the Fourth Convention, the ICRC is entitled to visit protected persons. Paragraphs 1 and 5 of this provision read as follows:

*"Representatives or delegates of the Protecting Powers shall have permission to go to all places where protected persons are, particularly to places of internment, detention and work."*

(...)

*"The delegates of the International Committee of the Red Cross shall also enjoy the above prerogatives."*

### **(b) Right of initiative under the Conventions**

Provisions giving the ICRC the right to act and not merely the right to make proposals are rare; the ICRC's activities are therefore based largely on its right of initiative, whether they are to help victims of conflict in general or in aid of refugees. The bases for this right are to be found in Article 10 of the Fourth Convention and Article 81 of Protocol I, which states:

*"1. The Parties to the conflict shall grant to the International Committee of the Red Cross all facilities within their power so as to enable it to carry out the humanitarian functions assigned to it by the Conventions and this Protocol in order to ensure protection and assistance to the victims of conflicts; the International Committee of the Red Cross may also carry out any other humanitarian activities in favour of these victims, subject to the consent of the Parties to the conflict concerned."*

In a non-international armed conflict this right of initiative is to be found in Article 3 common to the four Conventions (2nd paragraph):

*"An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict."*

### **2.2. The Statutes of the International Red Cross and Red Crescent Movement**

According to Article 5, paragraph 2, sub-paragraph d), of the Movement's Statutes (adopted in 1986), the role of the ICRC is:

*"d) to endeavour at all times—as a neutral institution whose humanitarian work is carried out particularly in time of international and other armed conflicts or internal strife—to ensure the protection of and assistance to military and civilian victims of such events and of their direct results".*

It is well known that large-scale influxes of refugees are usually brought about by armed conflict. Most ICRC activities in aid of refugees are based on the statutory right of initiative as set out in Article 5, paragraph 3:

*"3. The International Committee may take any humanitarian initiative which comes within its role as a specifically neutral and independent institution and intermediary, and may consider any question requiring examination by such an institution."*

In itself, the statutory right of initiative means that the ICRC may put forward proposals without them being considered interference or

an unfriendly act. Should the proposal be accepted, the resulting agreement forms the legal basis for the ICRC's action.

This right of initiative is more extensive than that provided for in the Conventions and Protocol I because it is not confined to situations covered by these instruments.

Nonetheless, three limits have been placed on this statutory or non-Convention-based right of initiative. The activities proposed must first of all be humanitarian, must clearly reflect the ICRC's neutrality and, lastly, its independence.

For the purpose of better defining their respective spheres of activities as set out in the Statutes of the Movement, the ICRC and the League signed an agreement on 25 April 1969 specifying the division of functions between the two institutions. This agreement was then the subject of an interpretation (18 December 1974) concerning relief operations.<sup>3</sup>

### **2.3. The Statutes of the ICRC**

The ICRC also takes action under its own Statutes to aid refugees. According to Article 4, the special role of the ICRC is:

*"d) to endeavour at all times—as a neutral institution whose humanitarian work is carried out particularly in time of international and other armed conflicts or internal strife—to ensure the protection of and assistance to military and civilian victims of such events and of their direct results;*

*e) to ensure the operation of the Central Tracing Agency as provided in the Geneva Conventions".*

### **2.4. Resolutions of the International Red Cross and Red Crescent Movement**

#### **(a) General points**

As a rule, the resolutions of an international organization are not binding unless the Parties feel otherwise and except for certain resolutions relating to the functioning of the organization itself. The resolutions adopted by the Movement are no exception. True, the ICRC does not need a resolution to take action vis-à-vis States because, as we have seen, it has a whole array of means. However, a resolution recommending, encouraging or supporting ICRC action is certainly an additional asset and serves as a further basis for its interventions.

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<sup>3</sup> This agreement is under revision.



### **(b) *The Manila Resolution***

In Manila in 1981 the Twenty-fourth International Conference of the Red Cross adopted an important resolution and an accompanying statement of policy defining the role of the International Red Cross and Red Crescent Movement in helping refugees, displaced persons and returnees. In that resolution, the Movement reminded governments that they were chiefly responsible for protecting and helping refugees. The subsidiary, back-up role of the Red Cross is also clearly stated therein. The statement of policy emphasises in paragraph 1 that *“The Red Cross should at all times be ready to assist and protect refugees, displaced persons and returnees, when such victims are considered as protected persons under the Fourth Geneva Convention of 1949, or when they are considered as refugees under Article 73 of the 1977 Protocol I additional to the Geneva Conventions of 1949, or in conformity with the Statutes of the International Red Cross, especially when they cannot, in fact, benefit from any other protection or assistance, as in some cases of internally displaced persons”*.

The statement of policy also points to the need to co-ordinate activities within the Movement, and with the UNHCR and governmental and non-governmental organizations working to help refugees.

The role of the ICRC Central Tracing Agency is also stressed.

Lastly, the Movement and the UNHCR are invited to consult each other regularly on matters of common interest and to co-ordinate their humanitarian assistance.

### **(c) *The Geneva Resolution***

In Geneva in 1986 the Twenty-fifth International Conference of the Red Cross adopted a second resolution on refugees. Among other things, it invites governments and the Movement to pursue their efforts in disseminating knowledge of international humanitarian law and encourages the Movement to step up its own information and training activities. Furthermore, it repeats its appeal to governments to permit the Movement to come to the aid of displaced persons within their own country. Lastly, the resolution stresses that collaboration with the UNHCR must be strengthened and enhanced.

### III. THE SPECIFICITY OF ICRC ACTION IN AID OF REFUGEES

The role of the Movement in relation to the UNHCR was defined in the Manila resolution referred to above. It should be noted that under international law a pre-eminent function in providing international protection and material assistance to refugees is assumed by the UNHCR.

#### 1. According to the situation

As we have seen, the ICRC takes action in aid of refugees whose condition as such is due to a conflict. In other words, the ICRC (and the National Societies) have a primary competence in the case of internally displaced persons.

Whether in Africa (Angola, Ethiopia, Sudan, Uganda, Mozambique), in Latin America (El Salvador, Nicaragua), in Asia (Thailand, Pakistan, East Timor, Philippines) or in the Middle East (Israel, the occupied territories, Lebanon), the ICRC has protected and provided material and medical assistance to hundreds of thousands of displaced persons over recent years.

Protection of and assistance to refugees in countries of first asylum and host countries is primarily the task of the UNHCR.

In the absence of that organization, it sometimes happens that the ICRC goes to the aid of refugees who normally would come under the UNHCR's terms of reference. This is the case in South Africa where the ICRC, working in concerted action with other humanitarian organizations since 1985, has set up and run an emergency programme in the Gazankulu region.

In border areas where refugees are the victims of armed attack, the ICRC (and the National Societies) see to the protection of the camp population there. It can be said that in such cases the UNHCR and the ICRC have concurrent competence.

The refugees along the border between Thailand and Kampuchea can be cited as an example of this, as well as those who have crossed the border from Afghanistan to Pakistan.

## 2. Modes of intervention

The scope of the ICRC's right of initiative in aid of refugees is extensive owing to the purely humanitarian nature of its mission.

As explained above, the ICRC's statutory right of initiative enables it to intervene in situations not covered by the Conventions. Thus, the ICRC has been able to take action in countries where the governments had not requested aid from any other organization, governmental or non-governmental.

Finally, the Movement can act quickly because it is flexible. The UNHCR can act quickly too, but it must first receive a request from the government of the refugees' country of asylum.

## 3. Forms of action

If the refugee belongs to the category of persons protected by IHL, protection is provided by the ICRC in the following manner:

- The ICRC is authorized by Article 143 of the Fourth Convention *“to go to all places where protected persons are, particularly to places of internment, detention and work...”*. This function is particularly important when the refugees are in detention, whether in prisons or in camps.
- The ICRC ensures respect for the rules of IHL relating to protected persons.
- The ICRC, through its Central Tracing Agency, registers protected persons, exchanges family messages and arranges for families to be reunited.

In other cases, ICRC action tends to be directed toward the physical protection of refugees, to safeguard their life and physical integrity.

The physical protection of refugees is a new concept for the UNHCR. In performing its function of providing international protection, the UNHCR:

- ensures that refugees find asylum and acquire a legal status in accordance with the definition given by the United Nations Convention of 1951 relating to the Status of Refugees;

- encourages the conclusion, ratification and application on a national scale of instruments of international law concerning refugees;
- more generally, endeavours to provide refugees with protection analogous to that accorded by a State to its nationals.

In situations which are the primary competence of the ICRC, the victims receive the assistance which corresponds to their needs.

In situations involving the ICRC's and the UNHCR's concurrent competence, the ICRC concentrates, in co-operation with the UNHCR, on its traditional activities of providing medical aid.

**Françoise Krill**

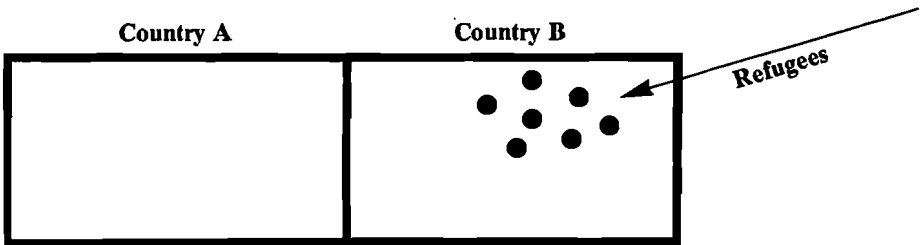
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**1.A. Aliens in the territory of a Party to a conflict — Case no. 1.**

*Facts:*

- Country A is in conflict with country B.
- Nationals of country A are refugees in the territory of country B.



*Protection:*

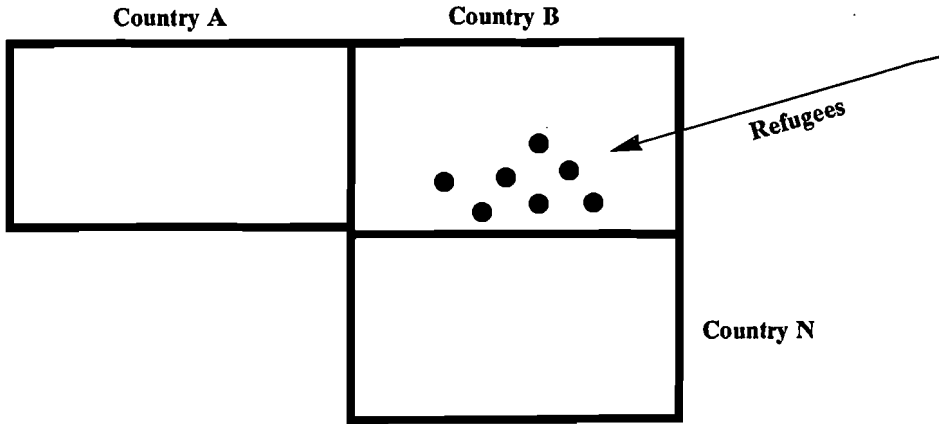
The refugees in country B are protected against abuses of power by country B by the Fourth Geneva Convention, Article 44, which stipulates that:

*“In applying the measures of control mentioned in the present Convention, the Detaining Power shall not treat as enemy aliens exclusively on the basis of their nationality de jure of an enemy State, refugees who do not, in fact, enjoy the protection of any government.”*

**1.B. Aliens in the territory of a Party to a conflict — Case no. 2.**

*Facts:*

- Country A is in conflict with country B.
- Nationals of neutral country N are refugees in the territory of country B.



*Protection:*

The refugees in country B are protected against abuses of power by country B by the Fourth Geneva Convention, Article 4, para. 1, if country N does not have diplomatic relations with country B:

*“Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.”*

Fourth Convention, Article 4, para. 2 — The Convention affords no protection if country N does have diplomatic relations with country B. This is a deficiency because the refugee no longer benefits from the diplomatic protection of the State whose national he is.

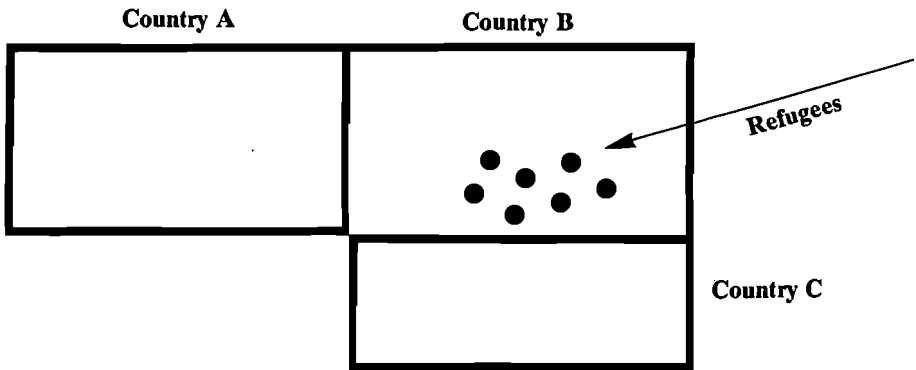
*“Nationals of a State which is not bound by the Convention are not protected by it. Nationals of a neutral State who find themselves in the territory of a belligerent State, and nationals of a co-belligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are.”*

Protocol I, Article 73, corrects this deficiency.

### 1.C. Aliens in the territory of a Party to a conflict — Case no. 3.

#### *Facts:*

- Country A is in conflict with countries B and C. B and C are allies.
- Nationals of country C (co-belligerent) are refugees in the territory of country B.



#### *Protection:*

The refugees in country B are protected against abuses of power by country B by the Fourth Geneva Convention, Article 4, para. 1 — If country C has no diplomatic relations with country B (rather unlikely hypothesis as B and C are allies):

*“Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.”*

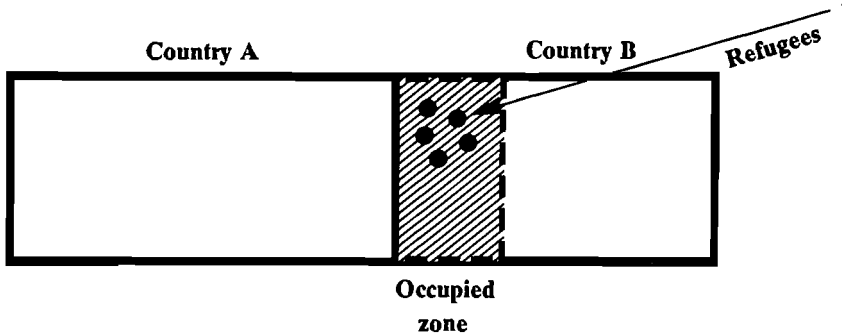
Fourth Convention, Article 4, para. 2 — The Convention affords no protection if country C has diplomatic relations with country B. This is a deficiency because the refugee no longer benefits from the diplomatic protection of the State whose national he is.

*“Nationals of a State which is not bound by the Convention are not protected by it. Nationals of a neutral State who find themselves in the territory of a belligerent State, and nationals of a co-belligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are”.*

Protocol I, Article 73, corrects this deficiency.

**2.A. Occupation — Case no. 1.***Facts:*

- Country A occupies part of country B's territory.
- Nationals of country A were already refugees in country B's territory before occupation.

*Protection:*

Refugees in the zone occupied by country A are protected against abuses of power by country B by the Fourth Geneva Convention, Article 70, para. 2, which stipulates that:

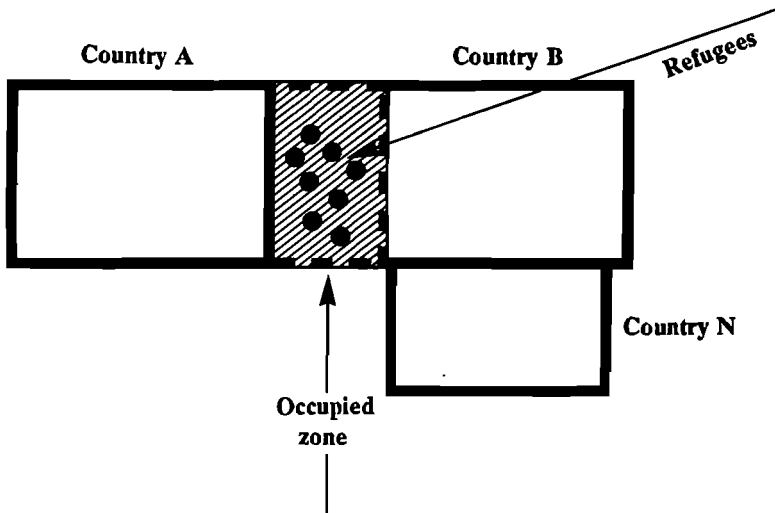
*“Nationals of the Occupying Power who, before the outbreak of hostilities, have sought refuge in the territory of the occupied State, shall not be arrested, prosecuted, convicted or deported from the occupied territory, except for offences committed after the outbreak of hostilities, or for offences under common law committed before the outbreak of hostilities which, according to the law of the occupied State, would have justified extradition in time of peace.”*



## 2.B. Occupation — Case no. 2.

### *Facts:*

- Country A occupies part of country B's territory.
- Nationals of neutral country N are refugees on the part of country B's territory occupied by country A.



### *Protection:*

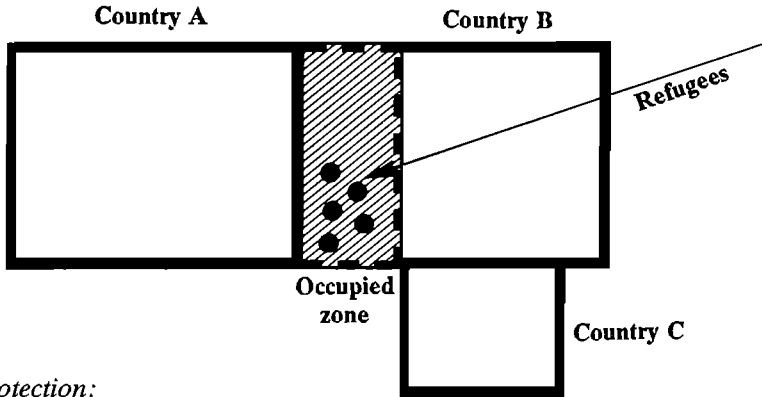
Refugees in the zone occupied by country A are protected against abuses of power by country A by the Fourth Geneva Convention, Article 4, para. 1 (See Pictet, "Commentary", bottom p. 48, explanation top p. 49.):

*"Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a party to the conflict or Occupying Power of which they are not nationals".*

## 2.C. Occupation — Case no. 3.

### Facts:

- Country A occupies part of country B's territory. Country C is a co-belligerent State, allied to country A.
- Nationals of co-belligerent country C are refugees on the part of country B's territory occupied by country A.



### Protection:

Refugees in the zone occupied by country A are protected against abuses of power by country A by the Fourth Geneva Convention, Article 4, para. 1, if country C does not have normal diplomatic relations with country A (rather unlikely hypothesis as A and C are allies):

*“Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals”.*

Fourth Geneva Convention, Article 4, para. 2 — The Convention affords no protection if country C has diplomatic relations with country A. This is a deficiency because the refugee no longer benefits from the diplomatic protection of the State whose national he is.

*“Nationals of a State which is not bound by the Convention are not protected by it. Nationals of a neutral State who find themselves in the territory of a belligerent State, and nationals of a co-belligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are”.*

Protocol I, Article 73, corrects this deficiency.

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## **PROTECTION AND ASSISTANCE FOR REFUGEES IN ARMED CONFLICTS AND INTERNAL DISTURBANCES:**

### **Reflections on the Mandates of the International Red Cross and Red Crescent Movement and the Office of the United Nations High Commissioner for Refugees**

**by Vitit Muntarbhorn**

This article examines the mandate to protect and assist refugees in armed conflicts and internal disturbances.<sup>1</sup> It is a modest attempt to clarify the web of overlapping roles and mandates of humanitarian bodies, in particular the International Red Cross and Red Crescent Movement ("the Movement") and the Office of the United Nations High Commissioner for Refugees (UNHCR). It purports to re-assess the evolution of their mandate and its extension. On the one hand, there is a need to define concrete principles, based on past and present practice, for humanitarian action. On the other, there must be sufficient leeway for flexibility and pragmatism in situations for which there is no comprehensive prognosis. The article concludes by demonstrating the interdependence and complementarity of humanitarian organizations which have to proffer protection and assistance where no other body can act.

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<sup>1</sup> For general reading, see G. J. L. Coles, "The Protection of Refugees in Armed Conflict and Internal Disturbance, paper submitted to the VIIIth Round Table on Current Problems of International Humanitarian Law and Red Cross Symposium, San Remo, September 1982; J. Pictet, *Humanitarian Law and Protection of War Victims*, Geneva: Henry Dunant Institute, 1975, especially pp. 115-38; J.-L. Blondel, "Assistance to protected persons", *International Review of the Red Cross*, No. 260, September-October 1987, pp. 451-468.

## Protection and assistance

At the international level, there has so far been no formal attempt to define the terms “protection” and “assistance” in relation to refugees in armed conflicts and internal disturbances. To a layman, the notions of protection and assistance are self-evident. A description of what lies behind the term “protection” may be found in this observation from the Movement:

“In Red Cross action, “to protect” implies preserving victims of conflicts who are in the hands of an adverse authority from the dangers, sufferings and abuses of power to which they may be exposed, defending them and giving them support.”<sup>2</sup>

At the very least, protection should comprise physical protection—protection from dangers to the person. In a wider perspective, protection may also be legal, in the sense that a person’s welfare derives from a range of legal principles which have to be safeguarded whether by judicial, administrative or other institutional means.

The term “assistance” is, arguably, even more a matter of common knowledge and needs no explanation. At the very least, it should comprise material relief in the form of food and medical aid.

One is tempted to leave the terms “protection” and “assistance” undefined because doing so gives them an inherent flexibility with a “catch-all” quality which can be adapted to new situations. As will be seen, the two notions are closely interlinked whether one talks of the Movement or the UNHCR: Indeed, in various instances where these bodies were initially requested to provide merely material assistance, they eventually became involved in the wider dimension of protection, both physical and legal.<sup>3</sup>

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<sup>2</sup> “The ICRC, the League and the Report on the Re-Appraisal of the Role of the Red Cross”, *International Review of the Red Cross*, from March-April 1978 to January-February 1979, pp. 1-72; 19. Footnote 1 on the same page develops the observation as follows: “In a broader context, one might say that ‘protection’ also includes developing, publicising and ensuring application and respect for international humanitarian law.”

<sup>3</sup> An example of how the role of the UNHCR may be extended from providing material assistance to cover legal protection can be seen in the case of Thailand. In various agreements between Thailand and the UNHCR in 1975, the term “assistance” was used in relation to the role of the UNHCR in Thailand. There was no express mention of the protection aspects in these agreements. However, from the outset, there has been a section of the UNHCR dealing with protection issues in Thailand. Protection furnished by the UNHCR has encompassed a wide range of matters, including protection against forced return, protection against physical abuses in camps, provision of legal aid where displaced persons are prosecuted for illegal entry, and arrest of those who perpetrate crimes against asylum-seekers, e.g., pirates.

## The Movement and refugees: the issue of mandate

The Movement's mandate in relation to refugees can be found in various instruments ranging from the Statutes of the Movement <sup>4</sup> to the 1949 Geneva Conventions <sup>5</sup> and their 1977 Protocols <sup>6</sup>. These instruments have been supplemented by various International Conferences of the Red Cross, the latest of which was convened in Geneva in 1986.<sup>7</sup>

The *locus classicus* is Article 5 of the Statutes of the International Red Cross and Red Crescent Movement. Article 5 (1) (d) effectively establishes the role of the International Committee of the Red Cross (ICRC) in protecting and assisting military and civilian victims of international and other armed conflicts or internal strife or of their direct results. Article 5 (3) adds to this by defining the ICRC's "right of initiative", which has so often served as a fall-back clause for its action, as follows:

"The International Committee may take any humanitarian initiative which comes within its role as a specifically neutral and independent institution and intermediary and may consider any question requiring examination by such an institution."<sup>8</sup>

As a corollary, the ICRC is designated as responsible for action to provide protection and assistance in case of war, civil war or internal strife, to military and civilian victims of such conflicts,<sup>9</sup> and also for the

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<sup>4</sup> See *Compendium of Basic Reference Texts on the International Red Cross, the International Committee of the Red Cross and the League of Red Cross Societies*, Geneva: ICRC, 1982, as amended by "Statutes and Rules of Procedure of the International Red Cross and Red Crescent Movement", *International Review of the Red Cross*, No. 256, January-February 1987, pp. 1-39.

<sup>5</sup> There are four 1949 Geneva Conventions:

- the First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field.
- the Second Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea.
- the Third Geneva Convention Relative to the Treatment of Prisoners of War.
- the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War.

For text, see *The Geneva Conventions of 1949, August 12*, reprint, Geneva: ICRC, 1983.

<sup>6</sup> For text, see *Protocols additional to the Geneva Conventions of 12 August 1949*, Geneva: ICRC, 1977.

<sup>7</sup> See further *Twenty-fifth International Conference of the Red Cross*, Geneva, 1986: "Resolutions of the International Conference and of the Council of Delegates", *International Review of the Red Cross*, No. 255, November-December 1986, pp. 1-58.

<sup>8</sup> "Statutes and Rules of Procedure of the International Red Cross and Red Crescent Movement", *op. cit.*, note 4, p. 11.

<sup>9</sup> *Ibid.*

operation of Tracing Agencies as defined in the 1949 Geneva Conventions.<sup>10</sup> As a complement to this, Article 6 (4) of the Statutes of the Movement gives the League of Red Cross and Red Crescent Societies (LRCS) the task of, *inter alia*, bringing relief to all disaster victims and helping victims of armed conflicts in cooperation with the ICRC.<sup>11</sup> It is for the latter reason that the ICRC and the LRCS came to an agreement in 1969<sup>12</sup> (interpreted in 1974 for the purpose of specifying certain of their respective functions in relief operations) whereby the primary responsibility for protection and assistance was conferred upon the ICRC in cases of international war, civil war, blockade or military occupation, while the LRCS would act in natural disasters, in co-ordination with the ICRC and National Societies. The role of the Movement was further reinforced by various resolutions on natural and man-made disasters adopted by the 1986 International Conference of the Red Cross.<sup>13</sup>

However, experience has shown that the Movement cannot operate without co-ordinating with other organizations. In particular, it has co-operated with the UNHCR. The importance of this practice was reiterated in Resolution XXI of the Twenty-fourth International Conference of the Red Cross (1981), entitled "International Red Cross Aid to Refugees",<sup>14</sup> whereby the Movement pledged support for the UNHCR in favour of refugees and displaced persons.

The Statement of Policy attached to the resolution is of special significance and reaffirms the role of the International Red Cross (as the Movement used to be known) as the residual institution where no other organizations are available, competent or willing to provide protection and assistance. Indeed, the Movement has declared its readiness to project and assist not only "refugees" but also "displaced persons and returnees", including internally displaced persons —a

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<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*, p.13.

<sup>12</sup> *Compendium of Basic Reference Texts on the International Red Cross, the International Committee of the Red Cross and the League of Red Cross Societies*, *op. cit.*, note 4, pp. 29-36.

<sup>13</sup> *Op. cit.*, note 8, pp. 31-3; 39-40. (Resolutions XXI and XXVI).

<sup>14</sup> See further "Twenty-fourth International Conference of the Red Cross, Manila, 1981: Resolutions and Decisions of the International Conference and the Council of Delegates", *International Review of the Red Cross*, No. 225, November-December 1981, pp. 318-357.



domain, *stricto iure*, outside the original mandate of the UNHCR.<sup>15</sup> Moreover, it has undertaken to take due account of the comparable needs of the local population in the areas where refugees, displaced persons and returnees are accommodated.<sup>16</sup> This, therefore, covers an immense range of persons eligible for relief. Nevertheless, Red Cross relief programmes are of an emergency character, consonant with the need to provide rapid physical protection and material assistance.<sup>17</sup> In consequence, in theory at least, they are of shorter duration than those of other relief organizations, such as the UNHCR.

Beyond the Statutes and the Resolution mentioned above, the role of the ICRC in relation to refugees is also set down in the Fourth 1949 Geneva Convention<sup>18</sup> and its Additional Protocol I of 1977.<sup>19</sup> Of interest are the provisions on refugees (Articles 44 and 70 of the Fourth Geneva Convention and Article 73 of Protocol I). Article 44 deals with the situation of refugees in the hands of a party to a conflict who are not nationals of the latter party and confers a measure of protection (such as through a Protecting Power) by stipulating that:

“In applying the measures of control mentioned in the present Convention, the Detaining Power shall not treat as enemy aliens exclusively on the basis of their nationality *de jure* of an enemy State, refugees who do not, in fact, enjoy the protection of any government.”

Article 70 (2) tackles the dilemma of refugees who subsequently fall into the hands of their State(s) of origin when the latter becomes the Occupying Power by stating that:

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<sup>15</sup> *Ibid.* Point 1 of the Statement of Policy provides that:

“The Red Cross should at all times be ready to assist and to protect refugees, displaced persons and returnees, when such victims are considered as protected persons under the Fourth Geneva Convention of 1949, or when they are considered as refugees under article 73 of the 1977 Protocol I additional to the Geneva Conventions of 1949, or in conformity with the Statutes of the International Red Cross, especially when they cannot, in fact, benefit from any other protection or assistance, as in some cases of internally displaced persons.”

<sup>16</sup> *Ibid.* Point 3 provides that:

“Assistance from the Red Cross should at all times take due account of the comparable needs of the local population in the areas in which refugees, displaced persons and returnees are accommodated....”

<sup>17</sup> *Ibid.* Point 3 states further that:

“Since Red Cross relief programmes are essentially of an emergency character, they should be phased out as soon as other organizations are in a position to provide the aid required.”

<sup>18</sup> *Op. cit.*, note 5.

<sup>19</sup> *Op. cit.*, note 6.

“Nationals of the Occupying Power who, before the outbreak of hostilities, have sought refuge in the territory of the occupied State, shall not be arrested, prosecuted, convicted or deported from the occupied territory, except for offences committed after the outbreak of hostilities which, according to the law of the occupied State, would have justified extradition in time of peace.”

Article 73 of Protocol I goes even further by elevating the status of these refugees to that of “protected persons”. This implies that they enjoy the protection provided by more than 120 articles of Parts I and III of the Fourth Geneva Convention, although the article itself is limited to those considered as refugees before the outbreak of the hostilities.

It can be seen that the term “refugees” has been left undefined by the body of international humanitarian law discussed above. Hence, the Movement’s mandate is nothing akin to that of the UNHCR, which originally covered only those who had left their home country for “well-founded fear of persecution”, as will be seen later. It is evident that the term “refugees”, as concerns the Movement, should be broad and unrestricted in meaning. This is not the case for the UNHCR. For this reason J. Pictet stated in his Commentary on the Fourth Geneva Convention that the definitions of the term “refugees” inherent in the Constitution of the International Refugee Organization (now defunct), the Statute of the UNHCR and the Convention relating to the Status of Refugees of 1951 “are valid for the particular purposes of law for which they were formulated, but are too technical and too limited in scope to meet the requirements of the Geneva Conventions.”<sup>20</sup>

Turning more specifically to the position of the International Red Cross within the framework of the 1949 Geneva Conventions and their Protocols, the role of the ICRC is provided for in Article 10 of the Fourth Geneva Convention and is reinforced by Article 81 of Protocol I, as follows:

“The provisions of the present Convention constitute no obstacle to the humanitarian activities which the ICRC or any other impartial humanitarian organization may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of civilian persons and for their relief.” (Article 10 of the Fourth Geneva Convention),<sup>21</sup> and

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<sup>20</sup> J. Pictet, *Commentary on the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War*, Geneva: ICRC, 1958, p. 264.

<sup>21</sup> The English version of the text uses the term “may”. The French version uses the term “entreprendra”. The latter seems more forceful than the former, but the difference may be unintentional.

"1. The parties to the conflict shall grant to the ICRC all facilities within their power so as to enable it to carry out the humanitarian functions assigned to it by the Conventions and this Protocol in order to ensure protection and assistance to the victims of conflicts; the ICRC may also carry out any other humanitarian activities in favour of these victims, subject to the consent of the Parties to the conflict concerned." (Article 81 of Protocol I).

Article 81 of Protocol I also bolsters the actions of the LRCS and National Societies by stipulating that:

"2. The Parties to the conflict shall grant to their respective Red Cross (Red Crescent, Red Lion and Sun) organizations the facilities necessary for carrying out their humanitarian activities in favour of the victims of the conflict, in accordance with the provisions of the Conventions and this Protocol and the fundamental principles of the Red Cross as formulated by the International Conference of the Red Cross.

3. The High Contracting Parties and the Parties to the conflict shall facilitate in every possible way the assistance which Red Cross (Red Crescent, Red Lion and Sun) organizations and the League of Red Cross Societies extend to the victims of conflicts in accordance with the provisions of the Conventions and this Protocol and with the fundamental principles of the Red Cross as formulated by the International Conferences of the Red Cross."

In relation to armed conflicts not of an international character, it is worth noting Article 3 common to the four Geneva Conventions, which enlarges the field of humanitarian services as follows:

"... An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict."

As a corollary, the role of the Movement is extended to displaced persons where there is no movement across borders.<sup>22</sup>

However, it is apparent that the Movement has preferred to base its actions on the 'right of initiative' under its own Statutes and subject to the consent of the parties concerned rather than having recourse to the Geneva Conventions and Protocol I as the basis for providing protection and assistance to refugees.<sup>23</sup> This is because the 'right of initiative' is of broader scope than the mandate stipulated by the Conventions. In effect, the former enables the Movement to provide protection and assistance in cases of internal tension and disturbances which are beyond the confines of traditional international humanitarian law as embodied in the Geneva Conventions and their Protocols.

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<sup>22</sup> See further V. Muntarhorn, "Transfrontier and Internal Displacement of People", *Amity International: Bulletin of the International Law Association of Thailand*, Vol. 2 (1) (1986), pp. 28-48.

<sup>23</sup> G. Abi Saab, "The Implementation of Humanitarian Law" in A. Cassese (ed.), *The New Humanitarian Law of Armed Conflict*, Napoli: Editoriale Scientifica, pp. 331-46.

On analysis, what emerges from the above discussion is the ambivalent nature of the ICRC mandate for refugees: it is comprehensive in scope, but ephemeral in principle. Its comprehensiveness lies in the fact that it can provide relief to a wider range of persons than the UNHCR can, due to the intrinsically flexible quality of the term “refugees”, left undefined, and pursuant to its “right of initiative”. On the other hand, in providing what it sees as emergency relief, it purports to give short-term protection-cum-assistance in keeping with the immediacy of the situation, unlike the UNHCR, whose goals are legally conditioned by long-term criteria.

### **The UNHCR and refugees: The issue of mandate**

The Statute of the UNHCR (1950) <sup>24</sup> is the basis for its mandate to provide protection and assistance to refugees. This mandate is stated categorically in relation to “refugees”, who are defined in Article 6 (B) of the Statute as:

“Any (other) person who is outside the country of his nationality, or if he has no nationality, the country of his former habitual residence, because he has or had well-founded fear of persecution by reason of his race, religion, nationality or political opinion and is unable or, because of such fear, is unwilling to avail himself of the protection of the government of the country of his nationality, or, if he has no nationality, to return to the country of his former habitual residence.”

By this very wording, the UNHCR is given the mandate to deal with those who have left their country of origin for “well-founded fear of persecution”. In essence, to fulfil the definition concerned, there must be a transfrontier movement: a person still in his home country is, *stricto jure*, not as yet a refugee. Moreover, he must have left with or without physical detriment, which has to be analysed subjectively and objectively. This definition of the term “refugee” is indeed a far cry from the opaque nature of the same term when used in the context of the Red Cross.

The definition above was, to a great extent, adopted by the Convention relating to the Status of Refugees of 1951 <sup>25</sup> in Article 1 (A) (2), as follows: a refugee is someone who

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<sup>24</sup> *Collection of International Instruments concerning Refugees*, Geneva: UNHCR, 1979, pp. 3-9.

<sup>25</sup> *Ibid.*, pp. 10-39.

“as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”

The difference between the definitions under the UNHCR Statute and the 1951 Refugee Convention lies in the time limit inherent in the latter, i.e., refugees as defined by the 1951 Convention being the product of events occurring before 1 January 1951, and in the optional geographical limitation clause attached to the definition by Article 1 (B) (1), whereby a contracting State may limit its responsibility to the European context and exclude other regions. The limitations mentioned were, however, subsequently discarded in the Protocol relating to the Status of Refugees of 1967.<sup>26</sup>

An important point to bear in mind is that the UNHCR has the mandate to deal with refugee situations in all countries if requested to do so, irrespective of whether they are parties to the 1951 Refugee Convention and its 1967 Protocol or not. By Articles 8 and 9 of the UNHCR Statute, guidelines are laid down for the protection and assistance of refugees, including, *inter alia*:

- promoting the conclusion and ratification of international conventions for the protection of refugees and supervising their application;
- promoting special agreements with governments conducive to measures improving the situation of refugees;
- assisting governmental and private efforts to promote voluntary repatriation or assimilation within new national communities;
- promoting the admission of refugees to the territories of States;
- providing its resources in such additional activities, including repatriation and resettlement, as the General Assembly may determine.

In the 1951 Refugee Convention, the role of the UNHCR is expressly stipulated by Article 35, reinforced by an array of long-term considerations establishing rights for refugees. Five categories of rights are given.<sup>27</sup> The first is that the refugee has the right to be treated in

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<sup>26</sup> *Ibid.*, pp. 40-4.

<sup>27</sup> See further L. W. Holborn, *Refugees: A Problem of Our Time. The Work of the UNHCR 1951-1972* (2 Vols.), Metuchen, NJ: Scarecrow, 1975, Vol. 1; G. Jaeger, *Status of International Protection of Refugees*, HCR/120/24/80 (1980), p. 18.

the same manner as other aliens generally, except where the Convention contains more favourable provisions. The second comprises a series of rights concerning which the contracting States are to accord to refugees within their territories the same treatment as that accorded to their own nationals, such as in matters of artistic rights and industrial property, access to courts, rationing, public relief, labour legislation and social security, fiscal charges, and conditional wage-earning employment. The third consists of a right to be treated at least as favourably as local nationals in relation to religion. The fourth relates to rights for which the contracting States are to accord to refugees the most favourable treatment accorded to nationals of a foreign country in the same circumstances, such as the right of association and general wage-earning employment. The fifth relates to rights for which the contracting States are to accord to refugees treatment as favourable as possible and in any event not less favourable than that accorded to aliens generally in the same circumstances, such as rights to movable and immovable property, self-employment, to have a liberal profession, to housing, and to education other than elementary education.

Complementary to the above are certain principles established by the 1951 Refugee Convention which are of primary importance. The most obvious is the principle of non-refoulement stated in Article 33 (1), whereby “no Contracting State shall expel or return (in French “*re-fouler*”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” In addition, Article 31 stipulates that the contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened, enter or are present in their territory without authorization, while Article 32 directs the contracting States not to expel refugees save on grounds of national security.

Ostensibly, the UNHCR has two roles:

- it is the guardian of refugees who fall within the purview of the 1951 Refugee Convention and its related Protocol, and
- it is the guardian of refugees who do not fall within the purview of the instruments concerned.

Yet, the fact that its mandate is explicitly set down in terms of a definite concept with a distinct definition —“refugees” who have left their country of origin for “well-founded fear of persecution”— also, if one were to take a literal approach of definitional interpretation,

limits that mandate. That definition was espoused in the context — eurocentric by nature— of people seeking political asylum in the wake of the Cold War. Present day circumstances are different.<sup>28</sup> Currently it is more often than not the victims of armed conflicts and internal disturbances who need protection and assistance, even though they do not flee because of “well-founded fear of persecution.”

Perforce, the role and competence of the UNHCR have had to be extended beyond the scope of the original mandate embodied in the UNHCR Statute and the refugee instruments.<sup>29</sup> In 1959, the General Assembly requested the High Commissioner to use his “good offices” to aid “refugees not within the competence of the United Nations”, although no indication was given of who these people were in legal terms. The use of “good offices” for this extended category continued in the 1960s, and culminated in the importation of another term in respect of UNHCR activities —“displaced persons”— in 1975.<sup>30</sup> Although the term ‘displaced persons’ had been used by the International Refugee Organization, comprising those fleeing from forced labour and Nazi persecution, the new use of this term is wider in conception. In particular, it has been applied to the situation of Indochinese persons seeking refuge in other countries. It was with this category in mind that the General Assembly endorsed ECOSOC Resolution 2011 in 1976, in which assistance to displaced persons was explicitly approved, such persons being identified as ‘victims of man-made disasters requiring urgent humanitarian assistance.’ This extension is thus concrete recognition of the repercussions of armed conflicts and internal disturbances which have superseded the context in which the UNHCR Statute and the refugee instruments were drafted.

Certain developments at the regional level have provided additional impetus for re-assessing the definition of the term ‘refugees’ and related institutional competence. Most notable is the definition stated in the Organization of African Unity (OAU) Convention governing specific aspects of refugee problems in Africa, adopted in 1969.<sup>31</sup> It incorporates the definition given in the 1951 Refugee Convention, but extends the

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<sup>28</sup> See further V. Muntarbhorn, *Shadowplay: The Legal Status of Refugees in Eight Asian Countries*, Chapters 2-4, forthcoming.

<sup>29</sup> D. McNamara, “Determination of the Status of Refugees —Evolution of Definition”, *Proceedings of the Symposium on the Promotion, Dissemination and Teaching of Fundamental Human Rights of Refugees, Tokyo, December 1981*, Geneva: UNHCR, 1982, p. 76-8.

<sup>30</sup> *Ibid.*, p.77.

<sup>31</sup> *Op. cit.*, note 24, pp. 193-200.

term "refugees" to cover "every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality." <sup>32</sup> To all intents and purposes, this definition comprises situations giving rise to man-made disasters, and is, arguably, synonymous with the term "displaced persons" used in the extended mandate mentioned above.

Support for enlarging the scope of the term "refugees" from the original definition to that of man-made disasters, as exemplified in the OAU Convention, can be gauged from reactions in other quarters. The OAU definition was approved by the Report of the Working Group on Current Problems in the International Protection of Refugees and Displaced Persons in Asia of 1981 <sup>33</sup> and by the Executive Committee of the UNHCR in its Conclusion 22 (XXXIII) of 1981 concerning the protection of asylum-seekers in situations of large-scale influx. <sup>34</sup> It was reiterated in the Conclusions of the Eighth Round Table on Current Problems of International Humanitarian Law and the Red Cross Symposium of 1982. More recently, the definition has been broadened even further to cover not only victims of man-made disasters but also victims of human rights violations. In the Cartagena Declaration of 1984, <sup>35</sup> some South American groups proposed the extension of the term "refugees" to cover "persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violations of human rights or other circumstances which have seriously disturbed public order." Arguably, the extension to encompass victims of human rights violations suggests a norm *de lege ferenda* rather than a widely accepted norm.

There is another development of the UNHCR mandate which deserves attention. In spite of the traditional view, whereby it would only act in countries receiving refugees rather than in countries of origin, the UNHCR has become increasingly involved in humanitarian activities in the countries from which the refugees originally fled.

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<sup>32</sup> *Ibid.*, Article I (2).

<sup>33</sup> *Report of the Working Group on Current Problems in the International Protection of Refugees and Displaced Persons in Asia*, San Remo: International Institute of Humanitarian Law, 1981.

<sup>34</sup> *Conclusions on the International Protection of Refugees*, Geneva: UNHCR, 1980.

<sup>35</sup> *Declaración de Cartagena 1984*, Geneva: UNHCR, 1985.



Numerous examples can be given of how UNHCR work has been extended to those countries. In Burma, it has been involved in the rehabilitation of returnees who had previously fled into Bangladesh.<sup>36</sup> It has provided help to Laotian returnees from Thailand and internally displaced persons in Laos.<sup>37</sup> It has also been an important catalyst in the Orderly Departure Programme in Vietnam, under which Vietnamese who wish to leave Vietnam for other countries may do so in an orderly fashion.<sup>38</sup> Whether or not one agrees with this extended competence, it is clear that pragmatism and flexibility are part and parcel of the UNHCR approach. When requested to provide relief, if no other organization is in a position to take charge, necessity *de facto* calls for action by the UNHCR even if its competence *de jure* in such situations is not clearly stipulated. In this respect, practice indicates that the UNHCR also embodies “fall-back” attributes parallel to those of the Red Cross, albeit in a more equivocal field of competence.

## Reflections

In general, it may be said that the mandates of the Movement and the UNHCR differ, at least in principle. More particularly, the ICRC enjoys a flexible mechanism within the existing framework of humanitarian law treaties and the Movement’s Statutes to offer protection and assistance not only to persons who have crossed frontiers to seek refuge, but also to others where no cross-border movement is apparent. Moreover, it can provide services on its own initiative, and it works in close co-operation with the LRCS and National Societies, the latter providing a key infrastructure at the local level.

By contrast, the UNHCR’s mandate is more circumscribed. Although it has been extended beyond refugees to encompass ‘displaced persons’ in transfrontier flows, it still does not cover, *stricto jure*, internally displaced persons, the local population affected by an influx of refugees, and situations in countries of origin —instances where the ICRC is competent to furnish relief. Moreover, at least in relation to assistance aspects, the UNHCR does not claim an inherent right of

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<sup>36</sup> *Report of the UNHCR, Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 12 (A/34/12)*, New York: UN, 1979, paras. 197-200.

<sup>37</sup> *UNHCR Activities financed by Voluntary Funds: Report for 1985-6 and Proposed Programmes and Budget for 1987*, UN Doc. A/AC.96/677 (1986), Part III, pp. 11-12.

<sup>38</sup> *Ibid.*, pp. 29-31.

initiative; it is in the more passive position of having to wait to be asked to act.

Nevertheless, Red Cross protection-cum-assistance is more transitory by nature, since it is conceived in terms of emergency relief, usually in the form of material assistance and immediate physical relief. On the other hand, the UNHCR not only provides material assistance but is also oriented towards a greater range of long-term protection services, as is demonstrated by the list of rights mentioned earlier in relation to the 1951 Refugee Convention.

In reality, their mandates do overlap on a number of points, especially in the case of massive transfrontier flows of persons seeking refuge as a result of armed conflicts and internal disturbances, which are very much contemporary tragedies. Both bodies are involved in furnishing material assistance, including food, welfare and medical aid. They are both involved in certain forms of legal protection, linked with or detached from physical protection. They both say that refugee camps should be in safe locations. They both visit refugees to ascertain their welfare and protest against abuses. They both trace refugee families and are concerned with family reunification as a lasting solution to the refugee problem. They both pay special attention to the plight of unaccompanied minors. They have both made provisions for issuing travel documents to refugees. Moreover, they have both been contributing to efforts to tackle the piracy problem affecting asylum-seekers.<sup>39</sup>

Their complementarity is enhanced by the fact that in certain situations which concern those who have left their country of origin for well-founded fear of persecution, the UNHCR has not been called upon to furnish protection and assistance, even though, *stricto jure*, these persons fall well within its institutional competence. Such is the situation of many Kampucheans and Vietnamese who are now living on Thai soil near the Thai-Kampuchean border. Although they have sought asylum in Thailand, the UNHCR has not been requested to take charge of them for various reasons, and it was therefore at the outset left to the ICRC to provide relief.<sup>40</sup> *De facto*, therefore, their roles have become complementary, and are recognised as such by Point 10 of the International Red Cross Aid to Refugees: Statement of Policy, which states that:

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<sup>39</sup> V. Muntarbhorn, "Asylum-seekers at Sea and Piracy in the Gulf of Thailand", *Revue Belge de Droit International*, Vol. 2 (1981-2), pp. 481-508, and Resolution V of the Twenty-fourth International Conference of the Red Cross, *op. cit.*, note 14, p. 7.

<sup>40</sup> *Annual Report 1986*, Geneva: ICRC, 1987, pp. 53-7.

"The international institutions of the Red Cross will have regular consultations with the office of the UNHCR on matters of common interest and whenever considered useful, will coordinate their humanitarian assistance in favour of refugees and displaced persons in order to ensure complementarity between their actions."<sup>41</sup>

Despite this complementarity, there is still no statement on the principles to be followed as basic standards for protection and assistance. Should there be common guidelines, explicitly stated? Can these be ascertained inductively from existing sources of law and practice? In this author's view, there is room for humanitarian organizations to agree on certain principles for the purpose of protection and assistance. This is all the more necessary because, even if there is some disagreement over the precise meaning of such terms as "refugees", "displaced persons", etc., these victims of circumstances beyond their control still need protection and assistance, however they are classified and whatever the terminology used for describing them.

Tentatively, a set of principles for humanitarian protection and assistance may be proposed as guidelines for the operations of humanitarian organizations. They would be derived from sources of law and practice, in particular concerning the ICRC and UNHCR, notably the four Geneva Conventions of 1949, their two Protocols of 1977, the 1951 Refugee Convention and the Conclusions of the Executive Committee of the UNHCR, such as Conclusion 22 (XXXIII).<sup>42</sup> Under the heading "**Principles for Humanitarian Protection and Assistance**", they should, at least, comprise the following:

- the principle of humane treatment, i.e., victims of armed conflicts and internal disturbances have a right to life and to be treated humanely;
- the principle of necessary assistance, i.e., these victims should receive all necessary assistance and should be able to satisfy their basic needs, such as food, shelter, medical aid and sanitary facilities;
- the principle of judicial protection, i.e., these victims should have access to courts of law or other competent bodies to protect their interests;
- the principle of family unity, i.e., these victims should be helped to re-establish family ties and rejoin their families;
- the principle of tracing, i.e., all possible aid should be given to trace relatives of these persons;

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<sup>41</sup> *Op. cit.*, note 14, p. 25.

<sup>42</sup> *Op. cit.*, note 34.

- the principle of special protection, i.e., vulnerable groups, such as women, children (especially unaccompanied minors), the aged and handicapped, need special measures to protect them;
- the principle of correspondence, i.e., these victims should have the ways and means of communicating with the outside world;
- the principle of family assistance, i.e., these victims should be able to receive material assistance from friends and relatives;
- the principle of personalty, i.e., these victims should be able to own personal effects, and measures should not be taken to deprive them thereof unless there are reasons of public security;
- the principle of personal arrangements, i.e., these victims should be able to make personal arrangements in relation to their births, deaths, marriages and testaments;
- the principle of safe location, i.e., these victims should be cared for and lodged in areas where they are safe;
- the principle of non-discrimination, i.e., these victims should enjoy the rights derived from the above without any adverse distinction.

These principles are not exhaustive, but are drawn from a variety of instruments and practices where the work of the Movement and the UNHCR overlap. They are particularly important where the victims themselves are detained in camps, as is the case in many countries which have adopted a closed door policy towards asylum-seekers. Indeed, they are but a manifestation of the most basic human rights which the Movement and the UNHCR can and should espouse for the sake of humanity in the face of growing compassion fatigue.

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# Thoughts on the relationship between International Humanitarian Law and Refugee Law, their promotion and dissemination

by Professor Jovića Patrnogić \*

## 1. Introduction

From the beginning of the 20th century up to the present, international law has been marked by a profound evolution: it has been progressively humanized. Those responsible for drafting international law have clearly understood that it could no longer disregard the fate of human beings and leave to States and their internal laws the protection of fundamental human rights, both in peacetime and during armed conflicts.

In the period between the two world wars, this new trend was fully justified by events and the need for it was sharply emphasized by flagrant violations of all human rights by totalitarian States. The impotence of international law thus became evident; demands were made and concrete initiatives put forward to extend the scope of international law to include the protection of human rights. The events of the Second World War and the period following it confirmed that it was indispensable, if humanity itself were to survive, to introduce into international law an effective mechanism designed to ensure respect for fundamental human rights and guarantees for the exercise of such rights at the national level.

The reaffirmation of the humanitarian branches of international law, in particular, human rights law, international humanitarian law and the law providing for the international protection of refugees, was a great encouragement for the development of that important body of rules.

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## **2. The different branches of international humanitarian law**

### **1. Human rights law**

The first systematic codification of human rights, based on the Universal Declaration of Human Rights of 1948, is represented by the International Covenant on Economic, Social and Cultural Rights of 1966 and the International Covenant on Civil and Political Rights of the same year. Henceforth, those instruments constituted the international and universal charter governing human rights.

### **2. International humanitarian law**

The development of international humanitarian law, which appeared for the first time in 1864 with the adoption of the First Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, culminated in its major codification in 1949. The Second World War gave new impetus to a tendency already apparent before the war to provide more comprehensive protection for war victims. It is interesting in this connection to recall the remark by the international relations specialist Kunz just before the Second World War: "Everything is perfectly ready for the war except the law of war". The four Geneva Conventions on the protection of the wounded, sick and shipwrecked, prisoners of war and civilians, adopted in 1949 and completed by the two Additional Protocols of 1977, together constitute an impressive humanitarian code of international law.

### **3. International refugee law**

International refugee law, which found its first expression after the First World War in the framework of the League of Nations system, was not prepared to meet the enormous need for protection of millions of refugees and displaced persons before and during the Second World War. The 1951 Convention relating to the status of refugees, the 1967 Protocol relating to the status of refugees and the 1950 Statute of the Office of the United Nations High Commissioner for Refugees codified some principles and fundamental rights of refugees. These instruments were supplemented by a Regional Convention of 1969 governing

specific aspects of refugee problems in Africa. International refugee law is in a phase of rapid development, impelled by the many new and different situations currently producing millions of refugees for whom it is essential to provide international protection.

### **3. A major obstacle to the implementation of human rights— State sovereignty**

The principal obstacle to an international guarantee of respect for fundamental human rights is the idea that States are completely sovereign. It is obvious that if the States are absolute masters in determining their internal policies as they like, no external intervention for the purpose of verifying whether due respect is being accorded to human rights, be it by a foreign State or an international organization, can be envisaged. From a more general point of view, it is also obvious that there can be no international order and no international organizations if the States continue to regard themselves as absolutely sovereign and refuse to acknowledge universal rules established and formulated by international law. The doctrine of State sovereignty has been severely criticized by all who understand that peace can be maintained only by a strongly structured international community and see clearly that such a community cannot be constituted without the surrender by States of at least part of their sovereignty. Within the international community, States are independent, just as individuals are free within their own national communities. Within the latter, individuals may move about freely, but only within the limits fixed by law; within the international community, States are independent, but only on condition that they recognize that none of them is permitted to impose its rule upon the others and on condition that they all submit to the rule of law. Of course the international standard thus constituted, even when embodied in a convention, is in general an imperfect law in that it has no provisions for sanctioning violations, but it is nonetheless legally binding on the States.

If, in the context of international relations, it were possible to replace State sovereignty simply by the power to rule within the limits laid down by law, the situation of the individual, of the human person, under international law should change completely. The main thing we have to bear in mind is that an international guarantee of fundamental human rights depends primarily on whether or not the dogma of

absolute State sovereignty persists; the stricter the limitations placed on State sovereignty, the stronger such a guarantee will be.

Today, effective organization of international protection for fundamental human rights as they are formulated in the great international instruments such as the covenants on human rights, the Geneva Conventions relating to the victims of war and the Convention on the status of refugees, is held up in practice by an exaggerated interpretation of State sovereignty. There are many cases to demonstrate that some governments, when they invoke respect for State sovereignty, are in reality simply attempting to avoid implementation of the international rules set forth in the international instruments regarded as applicable by the community of nations as a whole. The present difficulties of some international organizations responsible for monitoring the applications of humanitarian rules by the States, and for discharging the mandate entrusted to them by the States in the same instruments, are clear evidence of the fragility of the system of guarantees and sanctions relating to international protection of fundamental human rights.

The right of asylum, for example, has today assumed a character quite different from its previous status. Nowadays it appears to be an essential corollary of the right to life itself, for which it is often the supreme safeguard. What was once a moral duty of the State has been transformed into a right of the refugee. As the great specialist in international relations Georges Scelle wrote: "Until international law has extended its organic authority far enough into the constitutional and administrative conduct of States, we shall have to fear the consequences of an impassioned and often criminal interpretation by governments and majority groups of the respect due to the individual".<sup>1</sup> To ensure full protection of the right to life, the Universal Declaration of Human Rights, the Declaration on Territorial Asylum, the African Convention on the protection of refugees, and the American conventions on asylum have all confirmed the right of every individual to obtain asylum on the territory of any State of his choosing.

#### **4. Other obstacles**

One of the most striking and perilous characteristics of the present situation with regard to the protection of refugees results from the rapid

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<sup>1</sup> George Scelle, *Précis de droit des gens, principes et systématique*, Siray, Paris, 1932, Tome II, p. 49.



expansion of the problem, both qualitatively and quantitatively. It is very difficult for observers of the refugee phenomenon, and particularly for the public in general, to understand its causes, especially in the presence of the notion that all refugees are equal. The qualitative erosion of the most important principle involved in the protection of refugees, that is, *non-refoulement* (the rule that refugees should not be forcibly returned to their country of origin), together with the right of asylum on the one hand and the steady increase in the number of refugees on the other, are now presenting apparently insoluble problems to the international community.

We have to recognize that international law is still at the stage of looking for its own identity, one which would gain it acceptance as a well-integrated and coherent system of principles, rules and legal institutions. Substantial transformations must be made in international law to keep pace with new political, economic and technological conditions that call for a new approach to the progressive development of this law. As integral parts of international law, human rights law, humanitarian law and refugee law are all in the same situation and must take into account this new departure in international law. While we are fully aware of current events that face us and sometimes overwhelm us from all sides, those same events offer opportunities to change or supplement international law as a whole. After all, international law itself stems from the endorsement of existing situations and the formulation of rules corresponding to existing usages and time-tested practices. It is understandable that this effect of duration or repetition should apply also to more recent practices, resulting from the acceptance of new tendencies and new political, economic and ideological obligations.

## **5. Relationship between international humanitarian law and international refugee law**

### **1. General**

It should be emphasized at once that refugee law and international humanitarian law share the same fundamental concern, that is, protection of the individual. However, the two branches differ insofar as international humanitarian law is concerned with protecting *enemy* nationals, while refugee law is concerned with *foreign* nationals. The

law of human rights, on the other hand is designed primarily to protect persons against arbitrary treatment by the State to which they belong. In other words, there is a profound relationship and interdependence between the different humanitarian branches of international law, and an obvious complementarity.

## **2. International humanitarian law**

International humanitarian law is a highly developed system of legal principles and rules. It is designed to provide protection and assistance to the individual exposed to the various situations arising from armed conflict, whether international or non-international. It is a constellation of principles and rules protecting and guaranteeing certain fundamental human rights essential to human survival, such as the right to life, health, physical and mental integrity and maintenance of family ties, whenever those rights are gravely endangered on a substantial scale.<sup>2</sup>

The role of humanitarian law is both to establish standards of conduct based on the principle of humanity and to serve as a basis for positive action in defending fundamental human values. It should make a practical contribution to improving the living conditions of human beings and help individuals and peoples to obtain the protection and assistance they need. Furthermore, it should be recognized that humanitarian action and humanitarian law are even more important in that they provide means of dealing with all the major problems facing the contemporary world.

Humanitarian law contributes to peace insofar as it constitutes an obstacle to any resort to force in international relations and at the same time offers States the possibility of co-operating to solve practical problems relating to armed conflict. By giving emphasis to assisting victims and protecting those who provide such assistance, humanitarian law adds a new dimension to the traditional idea of human rights.

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<sup>2</sup> We may recall here that the definition of international humanitarian law adopted by the ICRC is as follows: "[The] international rules, established by treaties or custom, which are specifically intended to solve humanitarian problems directly arising from international or non-international armed conflicts and which, for humanitarian reasons, limit the right of parties to a conflict to use the methods and means of warfare of their choice or protect persons and property that are, or may be, affected by conflict", "Action by the International Committee of the Red Cross in the event of breaches of international humanitarian law". *International Review of the Red Cross*, No. 221, March-April 1981, p. 76.

The *Protocols additional to the Geneva Conventions* have contributed to the progressive development of international humanitarian law and its adaptation to new situations in which human beings, the victims, need assistance and protection. The Protocols reaffirmed and developed the links between the *law of the Hague* and the *law of Geneva*. They also confirmed the application of the fundamental human rights set out in international instruments on human rights in situations of armed conflict. We may say that with the Additional Protocols, humanitarian law reached a higher plane and level of applicability which strengthens the protection of individuals, that is, the victims of armed conflict. The sentiment of humanity, which focuses on protection of the individual, is one of the fundamental principles of humanitarian law and also serves as the basis for human rights instruments and refugee law.

The part of the *law of the Hague* that deals with methods and means of warfare, new weapons, the prohibition of perfidy, protection of the civilian population, distinguishing between civilian objects and military objectives, the definition of attacks, etc. is reaffirmed, adapted and developed in the new rules set forth in the Additional Protocols. The law of the Hague and the law of Geneva constitute an inseparable entity. We must also recognize that humanitarian law, through the Additional Protocols, reaffirmed its origins and its interdependence with fundamental human rights, thus assuming a new dimension.

When we speak of a new dimension of humanitarian law in its widest sense, that is, referring to its applicability not only in international and non-international armed conflicts but also in situations which are not covered by the Geneva Conventions and their Additional Protocols, we see that humanitarian law, regarded as a *protective* law (providing protection for different categories of war victims) and a *prohibitive* law (prohibiting methods and means of warfare that cause unnecessary suffering), may also be regarded as a *preventive* law which contributes to the maintenance of peace and its restoration in the event of armed conflict.

With regard to the protection of refugees, who are considered by humanitarian law as protected persons, especially in the context of international armed conflict, we find in the Fourth Geneva Convention of 1949 relative to the protection of civilians and also in Protocol I a direct relationship between humanitarian law and refugee law. The Fourth Geneva Convention has several provisions that protect refugees who find themselves on the territory of parties to the conflict and in occupied territory. However, the fundamental rule providing protection

for refugees in international armed conflicts is laid down in Article 73 of Protocol I. This article gives a definition of the persons who are regarded as refugees during hostilities and who have the same rights as persons protected under the Fourth Geneva Convention relating to the protection of civilians.

### **3. International refugee law**

Refugee law, based primarily on the 1951 Convention relating to the status of refugees, its 1967 Protocol and the 1950 Statute of the Office of the United Nations High Commissioner for Refugees, is a rather rudimentary system of legal rules and principles designed to protect refugees. These instruments stemmed chiefly from the experience of European countries which had to cope with great numbers of refugees during and after the Second World War. The dynamics of the refugee phenomenon, which has spread from Europe to Africa, Asia and Latin America, has demonstrated the urgent need for development of refugee law in order to extend the protection it affords to new categories of refugees. On the regional level, in 1969, African countries adopted the OAU Convention governing specific aspects of refugee problems in Africa. This text constitutes the effective regional complement for Africa to the United Nations Convention of 1951 on the status of refugees. In addition, a large number of resolutions adopted by the United Nations General Assembly have extended the mandate of the United Nations High Commissioner for Refugees to protect refugees in situations not provided for in the 1951 Convention.

The further codification of refugee law has now become a priority task in the field of international law. The experience and pragmatic work of the HCR have also demonstrated this need. Refugee law must be updated and tailored to new needs which call for more effective and comprehensive legal protection for all the refugees scattered in all corners of the world, without discrimination.

As we have already emphasized in discussing content, there is also an evident complementarity between humanitarian law and refugee law on the subject of the protection of refugees. A considerable number of rules in humanitarian law provide for the protection of refugees in armed conflicts and fill in gaps left by refugee law. On the other hand, the rules of refugee law afford protection for refugees in non-international armed conflicts and in situations of internal disturbances and tension, such protection not being provided by the rules of humanitarian law.

#### **4. Co-operation between the ICRC and the HCR**

This quite natural relationship is confirmed by the practical work of both institutions. The ICRC, guardian and promoter of humanitarian law, and the HCR, promoter of refugee law and body responsible for monitoring the application of the Convention on the status of refugees, co-operate in an exemplary manner, both in providing assistance and protection to refugees and in ensuring implementation of the humanitarian rules applicable to refugees, while at the same time remaining within the mandates assigned to them by their own respective statutes.

The Twenty-fourth International Conference of the Red Cross in 1981 adopted an important resolution on International Red Cross aid for refugees which was accompanied by a statement of International Red Cross policy in that domain. This was resolution No. XXI, which reaffirmed the natural relationship between humanitarian law and refugee law, the complementarity of the two institutions and the importance of co-operation between them as the bodies responsible for international protection of and assistance to refugees.

The resolution recalls the primary function of the Office of the UNHCR in the field of international protection and material assistance to refugees, displaced persons and returnees, as laid down by its Statute, the UN Conventions and Protocols relating to the status of refugees and relevant resolutions of the United Nations General Assembly. In view of the fact that the ICRC, the National Societies and the League all have their respective roles to play in the co-ordination of international relief operations for the benefit of refugees, especially when the latter do not fall within the mandate of the HCR, the resolution pledges the unremitting support and collaboration of the Red Cross with the HCR in their respective activities to help refugees and displaced persons.

Among the ten paragraphs of the Red Cross statement of policy on aid to refugees, two paragraphs deal with the relationship between humanitarian law and refugee law and co-operation between the Red Cross and the HCR:

“1. The Red Cross should at all times be ready to assist and to protect refugees, displaced persons and returnees, when such victims are considered as protected persons under the Fourth Geneva Convention of 1949, or when they are considered as refugees under article 73 of the 1977 Protocol I additional to the Geneva Conventions of 1949, or in conformity with the Statutes of the International Red Cross, especially when they cannot, in

fact, benefit from any other protection or assistance, as in some cases of internally displaced persons.

. . .

10. The international institutions of the Red Cross will have regular consultations with the Office of the United Nations High Commissioner for Refugees on matters of common interest and, whenever considered useful, will co-ordinate their humanitarian assistance in favour of refugees and displaced persons in order to ensure complementarity between their actions.”

Bearing in mind the humanitarian nature of the activities of the HCR and the ICRC, designed exclusively to protect refugees and the victims of armed conflicts, a comparable strategy could be established for refugee law and humanitarian law, based on the experience of the two institutions. The main objective of such a strategy would be to establish direct contact with the victims in need of protection and assistance, as is already done, for example, by the ICRC Central Tracing Agency.

## **6. Promotion of international refugee law and international humanitarian law**

### **1. General**

The promotion of humanitarian instruments in the widest sense covers all aspects of promotion, including encouragement to accede to and ratify them, ways of making their content known in all circles and all sections of the population, methods to be used for their dissemination, widespread and effective teaching of humanitarian principles and rules and, of course, the organization of research work with a view to the progressive development of humanitarian law and refugee law in national, regional and universal terms.

Major humanitarian institutions such as the ICRC and the HCR are already deeply involved in the dissemination of humanitarian law and refugee law. In the framework of the International Red Cross and Red Crescent Movement, the ICRC is the focal point for carrying out a plan of action for dissemination of humanitarian law, not only within the Movement but also among the public at large and particularly

military circles. The HCR has also begun to put into effect a plan of action for dissemination of refugee law on regional and national levels by organizing seminars and conferences on the protection of refugees.

## **2. Role of the International Institute of Humanitarian Law**

In the field of dissemination, the International Institute of Humanitarian Law in San Remo, Italy, has established a close relationship with the ICRC and the HCR. For almost 15 years the Institute, in co-operation with the ICRC, has been organizing 10-day courses once a year—three times a year since 1987—for members of the armed forces. Officers of various ranks from all parts of the world follow intensive courses on the law of armed conflict and the applicability of humanitarian law in armed conflict. There is an open dialogue between the teachers, mostly career officers, and the participants, concentrating on pragmatic aspects. Another objective of these special courses is to train teachers belonging to military circles on the national level.

In co-operation with the HCR, the institute also organizes regular courses, twice a year, on refugee law. These courses are addressed to government officials involved in or responsible for national activities to assist and protect refugees. This constitutes an especially practical form of dissemination of refugee law, dealing in particular with how to apply, on the national level, the instruments that protect refugees, and training people to launch and carry out campaigns to disseminate and teach refugee law.

With regard to dissemination of humanitarian law and refugee law on a larger scale, the Institute organizes its traditional annual Round Table every September on current problems of international humanitarian law. Experts from governments, the Red Cross and Red Crescent Movement and other international and national organizations hold talks in order to clarify and define the major problems of humanitarian law. They offer proposals and suggestions dealing with the questions considered and discussed. During the Round Table discussions, dissemination of humanitarian law is always a subject for special attention.

## **7. Conclusion**

In the new international order now emerging there will be an increasing need to identify, in relation to the liberty of States and the

liberty of men, personal liberty, which springs from one of the most vital qualities of the human being. The rivalry and hatred which ultimately lead to bloody conflicts no longer have any place in international life nor in social life and must be eliminated. They must be replaced by co-operation, both regionally and world-wide, through the United Nations and regional organizations serving order and peace.

International law must be strengthened by a sound system of guarantees and sanctions designed to maintain peace and prevent bloody confrontations between States. At the same time, however, we shall need more effective humanitarian law and well-developed refugee law to protect the victims of armed conflicts and the refugees who, unhappily, are still very much present on the contemporary scene.

**Professor Jovića Patrnogic**

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## **125th ANNIVERSARY OF THE INTERNATIONAL RED CROSS AND RED CRESCENT MOVEMENT**

*Events marking the 125th anniversary of the International Red Cross and Red Crescent Movement will continue until October 1989. The International Review of the Red Cross has asked leading figures in the world of humanitarian endeavour—National Society officials, people who have played a significant role within the Movement in recent years and others outside the Movement who have a profound commitment to its principles and work—to share with us their experiences and tell us what the Movement has meant to them in trying circumstances and how they see its future.*

*The Review is pleased to present in this issue the account of Dr. Dmitry D. Venedictov, M.D., President of the Executive Committee of the Alliance of Red Cross and Red Crescent Societies of the USSR. He gives his views on the history and development of the Red Cross in the USSR and around the world and discusses the prospects and priorities of a Movement which today is called upon more than ever to “help develop humanist ideas, peace, mutual understanding and co-operation among peoples...”.*

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# The Red Cross in the USSR and the World: History and Prospects

by Dr. Dmitry D. Venedictov

Public attention is being focused worldwide on the 125th anniversary of the International Red Cross, a milestone in the evolution of the International Red Cross and Red Crescent Movement.

When celebrating an anniversary, it is customary to look back into the past for a clearer understanding and appraisal of the present, and to gain insight into the future. This is particularly important as regards the International Red Cross and Red Crescent Movement, which is one of the most significant manifestations of humanism, symbolizing the recognition that society must uphold human dignity as the supreme universal value, and the desire to avert or relieve human suffering and safeguard human life and health.

The Movement grew out of compassionate and charitable feelings towards war victims on the battlefield, and has developed in parallel with the struggle of humanity against violence, arbitrary action and the evils of war.

Quite rightly, the International Red Cross has been closely identified with an outstanding Swiss citizen: Henry Dunant. The publication of his book, *A Memory of Solferino* (1862), drew broad attention to the plight of the victims of war, the suffering it engenders and the need to bring relief and proper assistance to the wounded and sick on the battlefield.

Similar views were already held, however, by precursors in several countries. Dr. N. I. Pirogoff, an outstanding Russian surgeon and social worker, gained renown throughout Europe for his work setting up military health services, organizing women—the first Sisters of Charity—to attend wounded and sick soldiers and developing war surgery, and for his analysis of war, which he described as a “traumatizing epidemic”.

The Movement’s development since then has been steady and complex. Its entire history from its inception 125 years ago testifies to a noble and energetic struggle to relieve suffering, improve health and defend the rights of humanity.

This development has taken place during a period of unprecedented political and social upheaval and change marked by two world wars, the advent of socialism in many countries, the collapse of colonialism, and the gradual conquest of outer space. It has been accompanied by internal change that has little by little broadened the scope of the Movement's activities and extended its role. Thus, despite periods of withdrawal, inactivity and failure, the Movement has nonetheless managed to win major victories.

Considerable historical merit goes to the Movement for having conceived and brought about the adoption of a series of treaties and international agreements for the protection of the victims of armed conflicts, and international legislation limiting the means and methods of warfare and ensuring the adequate protection of civilians.

The Movement has protested against the use in war of gas and other types of chemical weapons, and particularly dangerous explosive bullets that cause untold suffering. It has also protested against the unjustified sacrifice of civilian populations. After the tragic bombing of Hiroshima and Nagasaki brought the Second World War to an end, the Movement was among the first to recognize atomic weapons as a growing threat to the very survival of humanity, a view enshrined in many of its decisions and resolutions. It was also among the first to appeal to governments to prohibit the use of atomic energy for military purposes, and invite them to reach an international agreement restricting its use to peaceful ends.

In recent decades, the Movement has played an increasingly important role as a force for peace. Over 80 resolutions adopted by its various bodies since 1921 reflect its steadfast concern with strengthening peace, checking the arms race, eradicating war as the principal threat to human health and survival, enhancing mutual understanding between men, and promoting the spirit of humanism and peace, especially among the young.

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The Alliance of Red Cross and Red Crescent Societies of the USSR plays an active part within the Movement. The Alliance's activities uphold the humanitarian tradition begun with the foundation of the Russian Red Cross Society in 1867, four years after the creation, in Geneva, of the International Committee for Relief to the Wounded.

The public drive to help wounded and sick soldiers in fact began in Russia several years earlier, during the Crimean war (1853-1856), when

N. I. Pirogoff first sent the Sisters of Charity, whom he himself had organized, to attend war victims in the besieged city of Sebastopol.

Following Russia's "Great October Revolution", culminating in the creation of the world's first socialist State, whose 70th anniversary we recently celebrated, the Red Cross became a mass movement in the country, embracing the entire population.

At every stage in our country's development, the Soviet Red Cross has actively and tirelessly worked together with the State and public health authorities to promote peace, friendship and co-operation between peoples. It has played an important role in developing social and medical services, containing epidemics, organizing camps for children in poor health, promoting health education, launching the world's first airborne medical service, and assisting wounded and sick soldiers on the battlefield and in hospitals during the "Great Patriotic War".

From the birth of the Soviet State, the government and the Soviet Red Cross, supported by public opinion, have made every effort to ensure that humanitarian ideals prevail in the elaboration of international legislation restricting arbitrary action, violence and the evils of war.

The Soviet Red Cross maintains close working relations with the ICRC. One of their major fields of co-operation is the development and dissemination of the rules of international humanitarian law ensuring protection and assistance for the victims of conflicts and violence.

Soviet government and Red Cross experts took an active part in the conferences that produced the 1949 Geneva Conventions and their Additional Protocols.

Soviet Red Cross representatives regularly participate in the Round Tables on Humanitarian Law organized by the International Institute of Humanitarian Law in San Remo. In 1987 the Soviet Union was the venue for the Fourth International Seminar on International Humanitarian Law in the Contemporary World, organized jointly by the International Institute of Humanitarian Law, the Patrice Lumumba Peoples' Friendship University and the Alliance of Red Cross and Red Crescent Societies of the USSR.

Bilateral relations in the information field continue to develop. In 1987, the Alliance's Executive Committee and the ICRC signed an agreement on co-operation in the field of information, providing for the exchange of documents, films and video cassettes of interest to the Movement, joint film ventures, participation in international poster contests, the organization of seminars, etc.

An enlarged session of the Commission on the Red Cross, Red

Crescent and Peace on the theme "Information, dissemination and peace" is due to take place in 1988.

As the Movement expands and becomes more universal, it enjoys increasing authority vis-à-vis people and their leaders. The responsibility it bears in deciding on means of development and future activities also increases in proportion.

Since the end of the Second World War, more than 30 million people have been killed throughout the world in armed conflicts, and millions more have lost their homes, become refugees or been displaced. In the face of this, the Movement cannot and must not remain inactive. The protection of civilians and refugees, and the cessation and prevention of armed conflicts, require its particular attention.

In an era in which humanity is poised on the brink of nuclear suicide, the Movement's role in preserving peace must be reappraised, and obsolete stereotypes discarded. While the Movement's major goals—the protection of human life and health and the prevention and relief of suffering—remain unchanged, the meaning, definition and means of attaining those goals are constantly evolving. At present, we are setting great store by the Movement's new efforts to establish peaceful dialogue among peoples.

The International Red Cross and Red Crescent Movement must help develop humanist ideas, peace, mutual understanding and co-operation among peoples, and put its ideals into practice by struggling to avert the nuclear threat.

In our opinion, many of the theoretical and organizational concepts underlying the activities of the Movement's components, both nationally and internationally, must now be reassessed. This is particularly true of the fundamental tasks and principles guiding the Movement and shaping National Society activities throughout the world, not only in wartime and exceptional circumstances, but also in peacetime and the normal course of daily life.

The history and development prospects of the International Red Cross and Red Crescent Movement must therefore be seen in the new light of the considerable authority it enjoys and the important role it plays in contemporary society.

**Dmitry D. Venedictov, M.D.**

*President of the Executive Committee  
of the Alliance of Red Cross and  
Red Crescent Societies of the USSR*

## **A new Directorate for the ICRC**

In view of the impending departure of Mr. Jacques Moreillon, Director General, the Assembly of the International Committee of the Red Cross, the institution's highest-ranking body, decided at a meeting on 30 June 1988 on a new structure for the ICRC Directorate and made the necessary appointments.

The Directorate, which until now consisted of the Director General and the Director of Operations, is to be composed of six members from 1st September, each responsible for one of the following Departements:

Operations Department: **Mr. André Pasquier**

Operational Support Department: **Mr. Michel Convers**

Department of Principles and Law and Relations with the Movement:  
**Mr. Yves Sandoz**

Finance and Administration Department: **Mr. Jacques Hertzschuch**

Human Resources Department: **Mr. Philippe Dind**

Communications Department: **Mr. Alain Modoux.**

The members of the new ICRC Directorate have all been executives within the institution for several years, and their average age is 42. Furthermore, five of them began working for the ICRC as delegates in the field.

The new Directorate is responsible for management and administration in accordance with the decisions taken by the ICRC Assembly (which meets eight times a year), the Executive Council (which holds weekly meetings), and the President of the Institution, Mr. Cornelio Sommaruga.

The ICRC currently employs about 3,600 people, with more than 80 percent of them working in the field among its 44 delegations. The total of the ICRC's various budgets for 1988 is around 500 million Swiss francs.

## Official visits to the ICRC

### ● The Head of the Spanish Government

The Head of the Spanish Government, **Mr. Felipe González**, visited the headquarters of the International Committee of the Red Cross on 7 June 1988, and was received by the institution's President, Mr. Cornelio Sommaruga, and several members of the Committee. The Spanish Prime Minister was accompanied by Mr. Javier Solana, Minister for Culture and government spokesman. The Secretary General of the League of Red Cross and Red Crescent Societies, Mr. Pär Stenbäck, and the President of the Spanish Red Cross, Mr. Leocadio Marín, also attended.

In a welcoming speech, the ICRC President thanked the Prime Minister for the support Spain had given the ICRC. Mr. González informed him that the Spanish Parliament had been presented with a proposal to ratify the Additional Protocols to the Geneva Conventions, and he hoped that Spain would soon be able to ratify these two humanitarian instruments.

Finally Mr. González and Mr. Sommaruga continued talks they began at their first official meeting in Madrid in March, concerning the operational activities of the ICRC worldwide.

### ● The President of the Republic of the Philippines

The President of the Republic of the Philippines, **Mrs. Corazón C. Aquino**, visited on 14 June 1988 the headquarters of the International Committee of the Red Cross where she was received by Mr. Cornelio Sommaruga, the institution's President, and by several members of the Committee. Mrs. Aquino was accompanied by Senator Aquilino Jr. Pimentel and the Presidential Spokesman, the Hon. Teodoro Benigno.

The Secretary General of the League of Red Cross and Red Crescent Societies, Mr. Pär Stenbäck, was also present during the visit.

In his welcoming address, the President of the ICRC warmly thanked Mrs. Aquino for supporting the entire work of the ICRC in the Philippines (visits to detainees, help for displaced persons, dissemination) and for according the institution all the facilities necessary for carrying out its mandate.

In her reply, Mrs. Aquino thanked the ICRC for its notable work in her country. She stressed the noble dimension of the ICRC's neutrality, a neutrality resolute and clear of compromise, guided by those absolute principles that protect the dignity and foster the well-being of man.

The Swiss Federal Government in Bern took the opportunity of President Aquino's visit to donate one million Swiss francs to the ICRC's Emergency Appeal for its activities in the Philippines.

## ● The Secretary-General of the United Nations

**Mr. Javier Pérez de Cuéllar**, the Secretary-General of the United Nations, visited on 6 July 1988 the headquarters of the International Committee of the Red Cross, where he met Mr. Cornelio Sommaruga, the institution's President, and several members of the Committee.

Mr. de Cuéllar and Mr. Sommaruga made speeches in which they drew attention to both organizations' ceaseless endeavour to limit the use of force. They pointed out how necessary it was to encourage the world's States to become party to the instruments of international humanitarian law, in particular the 1977 Protocols additional to the Geneva Conventions of 1949.

Both stressed that it was vital to maintain frequent contact between the headquarters of the two organizations and between their staff in the field, who over the years have built up a complementary relationship of mutual co-operation without in any way sacrificing their respective independence.

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## **Death of Mr. V. H. Umbricht, honorary member of the ICRC**

The ICRC was profoundly saddened by the death, on 14 July 1988, after a very long illness, of Mr. Victor H. Umbricht, honorary member of the ICRC and former Vice-President of the institution.

Mr. Umbricht served the ICRC for almost 20 years, a period of profound change for the institution during which his personality and achievements played an important role. He became a member of the International Committee in 1970 and three years later a member and Vice-President of the ICRC's Executive Board before being appointed Vice-President of the ICRC, a post he held until 1985. He was made an honorary member of the International Committee in 1986.

Mr. Umbricht was born in Endingen, Switzerland, in 1915. After obtaining a doctorate in international law from the University of Bern, he entered the Swiss Diplomatic Service where he served from 1941 to 1953. In that year he was appointed Deputy Director of Operations for Europe, Africa, Asia and Australasia at the World Bank in Washington, and in 1957 became Director General of the Federal Finance Administration in Bern. From 1960 to 1961 he was financial adviser and chairman of the currency council in Kinshasa, Zaire (then the Belgian Congo) and from 1965 to 1985 a member of the Board of Directors of CIBA and CIBA-GEIGY in Basel. In addition, from 1968 to 1976 he was a member of the advisory board of the Committee of the Mekong River Development Project, an organization operating under UN auspices to promote the economic development of the Mekong basin and grouping Thailand, Laos, Cambodia and Viet Nam.

He undertook a great many missions for the ICRC in some of the world's most intractable trouble-spots: the Middle East during the 1973 Arab-Israeli war, South-East Asia during the conflict in Viet Nam and Cambodia, Bangladesh during the 1971 war between India and Pakistan and Uganda during its period of bloody internal strife. He was assigned by the United Nations to mediate from 1977 to 1984 between Kenya,

Tanzania and Uganda, the members of the former East African Community, and his success in settling differences between the parties won him the esteem of all concerned.

Victor Umbricht's exceptional abilities as mediator were tremendously useful to the Red Cross Movement in furthering its specific objectives of bringing help and protection to the victims of war. It can thus be said that thousands of men and women throughout the world benefited from his work.

In a tribute to the former Vice-President, Cornelio Sommaruga, President of the ICRC, said: "Victor Umbricht devoted himself to the Red Cross with steadfast optimism, unflagging energy and unfailing dedication.... Victor Umbricht was a true citizen of the world who did not take lightly his position as member of the International Committee. He passionately believed in the ICRC's objectives and strove to ensure that the institution remained faithful to his own principles of total competence, flexibility, discretion and non-paternalistic tolerance.... His hopes and objectives remain our own. We are profoundly indebted to him for the example he set ... and shall do our utmost to follow in his footsteps."

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## **Death of Professor D. Frei member of the ICRC**

Daniel Frei, member of the International Committee of the Red Cross since 1 March 1986, died suddenly on 1 August 1988.

Dr. Frei was born on 24 October 1940 in St. Gallen. When he was 24 years old, he obtained a doctorate in history from the University of Zurich. His studies took him to the London School of Economics and Political Science, the University of Michigan and finally the Graduate Institute of International Studies in Geneva where he received a degree in 1967.

In 1968 he became a lecturer and in 1971 Professor of Political Science at the University of Zurich. He was also Director of the Swiss Institute for International Research.

Dr. Frei was the author of many publications dealing with East-West relations, disarmament, neutrality and international co-operation. He

was a member of the Club of Rome and consultant to UNITAR (United Nations Institute for Teaching and Research) and UNIDIR (United Nations Institute for Disarmament Research).

He believed fervently in our cause and devoted himself to it throughout his time as member of the ICRC, placing his vast knowledge at the service of the Movement.

Dr. Frei belonged to several ICRC committees, including those responsible for principles and general policy and relations with the other components of the Movement. He was also a member of the working groups for the ICRC's "Plan for the future", public relations and the Clark R. Benedict Fund. He served on the Commission on the Red Cross, Red Crescent and Peace and in that Commission's working group on human rights. Finally, he was a member of the ICRC's delegation to the Twenty-fifth International Conference of the Red Cross in 1986.

Dr. Frei carried out missions for the ICRC in Turkey, Jordan, Romania, Poland, French Guiana, Brazil, the United States, Bulgaria, Italy and Israel. He was about to become a member of the General Assembly of the Henry Dunant Institute.

The Committee is profoundly grateful for Dr. Frei's devoted work and deeply distressed by his premature death.

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*EXTERNAL ACTIVITIES**May-June 1988***Africa****Ethiopia**

At the beginning of June the ICRC was compelled to put an end to its protection and assistance operations in aid of the victims of drought and conflict in the provinces of Eritrea, Tigray, Gondar and Wollo. In the interest of these victims, the ICRC sought agreement from the donor governments to transfer its foodstocks and logistic means in Ethiopia to other organizations. This was done after the Ethiopian authorities had confirmed the decisions conveyed to the ICRC in April and May and forced the ICRC to withdraw all its expatriate staff involved in the assistance operation. The ICRC nevertheless maintained a presence in Ethiopia to continue its activities on behalf of Somali prisoners of war. This aspect of its work, which falls within the Geneva Conventions, had not been called in question by the Ethiopian Government.

**Somalia**

Following the agreement reached between the Somali and Ethiopian authorities on 3 April, the ICRC offered its services to both governments with a view to taking part, as a neutral intermediary, in the repatriation of prisoners of war and other captured persons. On 24 May, the Somali Government agreed to the ICRC's proposal, and discussions took place in June to decide on the practical procedures for visits to the prisoners and for their registration and repatriation. A team of delegates left Geneva on 28 June to begin visiting Somali prisoners of war and civilian internees in early July.

Fighting was reported in the north of the country. The ICRC also sent to Mogadishu a team of delegates, including a doctor. On 9 June, the team visited Garoe and Anod, in the north of the country. An ICRC doctor went on a round of the hospitals in the capital, making arrangements for the delivery of medical supplies and for an increase in local staff to deal with the influx of wounded.

**Sudan**

On 7 May the ICRC Director of Operations was granted an audience by the Sudanese Prime Minister, H. E. Mr. Sadek el Mahdi, during which the ICRC's plan of action in the south of the country was discussed. All the parties involved having agreed to this plan, an initial team of delegates went to Wau in mid-June.

**Mozambique**

Following the resumption, on 23 April, of ICRC activities on behalf of the civilian population, flights were made to eight different places in Sofala Province during the two months under review. In each of these places, surveys preceded distributions of material, food and medical supplies, as required. Despite all their efforts to obtain the agreement of the parties concerned, by the end of this period the ICRC delegates had still not been able to gain access to other provinces—excepting their capitals.

The higher authorities of Mozambique gave their consent for ICRC visits to security detainees awaiting trial or already sentenced, and on 27 June a team of delegates was able to begin visiting prisoners held by the Ministry of Security.

**Latin America****Cuba**

For the first time, a team of ICRC delegates made a series of visits to security detainees in Cuban jails. These visits took place after an agreement had been reached between Cuban President Fidel Castro and ICRC President Cornelio Sommaruga during Mr. Sommaruga's visit to Havana in April. The ICRC delegates visited 395 security detainees in 12 places of detention.

**Peru**

After an interruption of more than one year, the ICRC delegation was able to resume its activities in the emergency zone of Ayacucho (visits to places of detention and ad hoc provision of assistance). At the end of June, however, after three months of ICRC presence in the area, the authorizations enabling the delegates to work there were

suspended. ICRC activities (such as visits to persons detained by the Ministry of Justice under the antiterrorist law, material and medical assistance to detainees, aid to families most in need and assistance programmes for the civilian population) continued in Lima and in other regions of Peru, with a number of restrictions, however, regarding access to detainees held by the Ministry of the Interior.

### **Other activities**

The ICRC also visited security detainees in *Chile*, *Nicaragua* and *El Salvador*.

It carried on its assistance programmes for the civilian population in *Nicaragua* and *El Salvador*. In El Salvador, in addition to its medical and public health programmes, the ICRC organized a new agricultural programme and several ad hoc food distributions to alleviate the effects of the drought that had struck the country in late 1987. From mid-April to mid-May, it provided maize seed, fertilizer and insecticides to 1,251 families. In *Guatemala*, the ICRC delegation continued making surveys in various provinces, and in some cases it provided displaced civilians with blankets and basic medicaments.

Missions were carried out in *Bolivia*, *Haiti* (since May the ICRC no longer has a delegate permanently stationed there), *Panama* and *Paraguay*, where the ICRC opened an office run by a local employee.

## **Asia**

### **Afghan conflict**

#### *Afghanistan*

ICRC delegates completed the first part of their visit to Pul-I-Charki prison, where they had access, in accordance with customary ICRC criteria, to detainees held by the Afghan Ministry of the Interior. Some of the detainees filled in Red Cross messages to be forwarded to their families.

Activities went on at the Kabul orthopaedic centre, as did the assistance programmes for seven Afghan Red Crescent dispensaries and four civilian hospitals in the capital. The ICRC also continued setting up its future surgical hospital in Kabul and organized a nursing course for about 60 Afghan employees. An initial medical survey was made in Herat at the end of May.

*Pakistan*

During May and June ICRC delegates made several visits to Afghan prisoners held by the resistance. Discussions continued with a view to visiting all persons detained by the Afghan opposition.

Occupancy was extremely high during the period under review at the ICRC hospitals in Peshawar and particularly in Quetta, where 475 wounded were admitted (as compared to 275 in Peshawar), as a result of the fighting that broke out in the province of Zabul and in Kandahar. A third surgical team and a nurse were sent to Pakistan at the end of May to help the hospital staff cope with the increased number of wounded.

**Kampuchea Conflict**

The ICRC carried on its activities and representations on behalf of the civilian population on the Khmer-Thai border and of persons detained by the parties to the conflict.

The trend observed over the past few months was confirmed in May and June: none of the civilian camps (sheltering approximately 300,000 people) along the border were directly affected by the hostilities. Inside the camps, however, whereas incidents involving Thai soldiers were relatively few and far between, violence among the camp population reached a climax, particularly at Site 2, where tension ran high on account of the latent insecurity and overcrowding. The ICRC continued requesting that this huge camp be divided into smaller units. Following an agreement between the UNHCR and the Thai authorities, a new camp, called Ban Tat, was set up to the south of Site 2 for all newly arrived Vietnamese land refugees and boat people. The camp was opened in May and was providing shelter for 3,200 boat people by the end of June. All the Vietnamese refugees at Site 2 (approximately 5,400) not accepted by a host country will be transferred to this new camp. In the four camps controlled by Democratic Kampuchea and accessible to the ICRC, working conditions were still far from satisfactory.

Despite regular representations to the authorities concerned, during the period under review the ICRC had still not visited any of the persons interned within the context of the Kampuchea conflict.

Medical activities were continued by the three ICRC surgical teams working at Khao-I-Dang.

The Polish Red Cross medical team working under the ICRC's responsibility at Kampot (Democratic Kampuchea) Provincial Hospital

continued caring for wounded soldiers and civilians and training Khmer doctors and nurses.

### **Philippines**

In May and June, the ICRC continued its activities in the Philippines, visiting persons detained in connection with insurgency-related incidents and following *coup* attempts, both in the provinces and in Metro Manila (660 persons visited during the first half of 1988 in more than 50 places of detention). The ICRC also pursued its medical and material assistance programme for persons displaced on account of the events, mainly on Mindanao, but also in Luzon and the Visayas. During the first six months of 1988, 76,601 displaced people received such assistance. The first seminar on international humanitarian law for about 60 Filipino army officers was organized by the ICRC in May, with the participation of two specialists from Geneva.

## **Middle-East**

### **Israel and the occupied territories**

In May and June, ICRC delegates in Israel and the occupied territories continued their activities in connection with the events that had been affecting the occupied territories since December 1987, visiting persons arrested on account of those events, checking on conditions of internment and providing material assistance to detainees; monitoring medical facilities assisting local Red Crescent sections and visiting casualties; evaluating the general situation in the villages and camps in the occupied territories and providing material assistance to families whose houses had been ordered destroyed. The delegation also contacted the authorities with a view to solving certain problems arising from violations of international humanitarian law. On 19 May it forwarded a summary report to the Ministry of Defense, in which it reminded the Israeli authorities of their obligations and their responsibility regarding the behaviour of soldiers in charge of riot control.

On 31 May the delegates carried out a general census in the seven military detention centres now holding the persons arrested in connection with the events; they registered 5,139 detainees there, including 1,939 administrative detainees. The delegation moreover continued its traditional protection activities (such as visiting prisons and police stations).



To strengthen its operational infrastructure, the delegation set up Tracing Agency facilities and opened a new office in Nablus on 7 June, covering the northern part of the West Bank.

### **Lebanon**

The fighting between Amal and the Hezbollah in the southern suburbs of Beirut, the clashes between Palestinian factions and the Israeli operations against the bases of the Islamic resistance in southern Lebanon had serious consequences for the civilian population and caused the ICRC to step up its activities, which it carried out under sometimes difficult conditions: the delegates went out into the field on scores of occasions, made countless visits to hospitals and distributed medical supplies and food to people trapped between the lines of fighting; they also provided assistance to many inhabitants of the suburbs who had been forced to flee to the south.

Emergency relief operations were organized in addition to the ICRC's customary assistance activities in the villages of southern Lebanon worn down by the interminable conflict.

The delegates also continued their protection activities in the country.

### **Iran/Iraq Conflict**

The third series of visits made in 1988 to the Iranian prisoner-of-war camps in Iraq began on 28 May. Similar visits in Iran had not been resumed, so on 13 June the ICRC forwarded a *note verbale* to the Iranian Ministry of Foreign Affairs, in which it reminded the Iranian authorities of the problems in the application of the Third Geneva Convention encountered by the ICRC during its single series of visits in 1986-1987 to 15 camps and six hospitals holding Iraqi prisoners of war interned in Iran.

Assistance to displaced persons protected by the Fourth Convention formed the subject of a second urgent appeal launched by the ICRC on 9 May to National Societies and donor governments.

A dissemination seminar on the Third Geneva Convention was held in Baghdad from 16 to 24 June for commanders of prisoner-of-war camps, senior officers of the military police and military judges. This seminar, the first of its kind, was jointly organized by the ICRC delegation, the Iraqi Red Crescent and the Iraqi Government's Permanent Committee for War Victims.

### **MESSAGE FROM THE INTERNATIONAL RED CROSS AND RED CRESCENT MOVEMENT TO THE THIRD SPECIAL SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY ON DISARMAMENT**

*The following message was addressed last June by the President of the ICRC, the President of the League of Red Cross and Red Crescent Societies and the Chairman of the Standing Commission of the Red Cross and Red Crescent to the Third Special Session of the United Nations General Assembly on Disarmament, which was held from 31 May to 25 June 1988. In this message, the Movement draws the international community's attention to the terrible damage caused by modern weapons, which are hideously cruel, in particular antipersonnel mines, which are often used without discrimination and which kill or maim numerous innocent victims, bullets that cause especially appalling wounds and chemical weapons.*

*The Movement requests States to respect the rules prohibiting or restricting the use of such weapons, to ensure that these rules are strictly observed and to give favourable consideration to the drafting of additional rules.*

*It reminds States that the 1977 Protocols additional to the Geneva Conventions reaffirm the fundamental principles in this connection and that the 1980 Convention states the rules pertaining to the prohibition or restriction of the use of certain conventional weapons.*

*All States are invited to accede to those instruments.*

\* \* \*

From the outset the International Red Cross and Red Crescent Movement has stressed that its basic *raison d'être*, which is the humanitarian activities it undertakes on behalf of the victims of armed conflicts, does not in any way imply acquiescence to the state of war. It wishes to make this clear to the Third Special Session of the General Assembly on Disarmament, as it has done at previous sessions. Indeed, how could any other attitude be adopted by a Movement which, for the past 125 years, has sadly been a first-hand witness to so many armed conflicts, with all the deaths, injuries, and physical and mental suffering they entail; a Movement which expends considerable energy, in almost 150 countries, in providing medical and social assistance to people in need?

Admittedly, the first and most important task of the Red Cross and Red Crescent is action in the field, caring for the wounded, visiting prisoners and giving material and moral support to the civilian population. It also draws up and promotes international humanitarian law designed to protect the victims of armed conflict.

But field activities and legal work have naturally always been accompanied by a more general reflection that has led the Movement to express—in no uncertain terms—its indignation about the terrible effects of war and to focus its attention on the contribution it can make to a more peaceful world. In 1984, it once again addressed a message in these terms to the international community at the close of a meeting attended by all the components of the Movement (the National Red Cross and Red Crescent Societies, the ICRC and the League).

The obvious connection between peace and disarmament has not escaped the Movement, which did not hesitate to join in the effort to achieve general and total disarmament. However, the relationship between disarmament and State security is also undeniable; it sets the limits, in this respect, on what can be done by a Movement compelled by virtue of its principles to remain outside the political forum. It is essentially by bearing witness to the horrors of war and setting an example of humanitarian activity that the Movement brings home to Governments their responsibilities in dealing with the problem of disarmament with all the energy such a task requires.

The sinister escalation, throughout the twentieth century, of the methods of warfare deployed in armed conflicts has led to the appearance of increasingly cruel weapons and means of mass destruction, with well-known consequences for innumerable innocent victims who are either massacred or mutilated for life. The Movement is gravely concerned about such developments. Indeed, it was at the forefront of the

effort to ban chemical weapons between the two World Wars and was one of the first organizations to express consternation after nuclear weapons had been used.

Although the dreadful effects of such devices are now common knowledge, the Movement considers that its presence on today's battlefields makes it its duty to draw the attention of the international community to the terrible damage caused by modern weapons, which are hideously cruel.

We are thinking in particular of antipersonnel mines, which strike indiscriminately, maiming the victims they do not kill outright, and bullets which cause especially appalling wounds. Even in the narrow perspective of warfare, there is no need to maim soldiers who could be put out of action by some other means, and it can never be justified to massacre children.

The same goes for chemical weapons, which sadly are once again making headline news and which strike their victims indiscriminately.

The 1977 Protocols additional to the Geneva Conventions reaffirm that it is prohibited to employ weapons of a nature to cause superfluous injury or unnecessary suffering and a Convention was adopted in 1980 to prohibit or restrict the use of devices such as mines and booby-traps. States should accede to or ratify those instruments.

Large-scale studies have been undertaken and are still continuing on the effects of different types of bullets. States should spare no efforts to bring these studies to a successful conclusion and must respect their obligation to refrain from using projectiles that cause unnecessarily cruel injury.

The prohibition to resort to chemical weapons has achieved universal recognition. States must prevent this ban being put into jeopardy.

The International Red Cross and Red Crescent Movement greatly appreciates the efforts undertaken by the United Nations Organization with regard to disarmament and the holding of this Third Special Session of the General Assembly on Disarmament.

The specific suggestions we are making to States will provide them with the opportunity to demonstrate their good will.

We earnestly beg them to seize this opportunity.

*President of the  
League of Red  
Cross and Red  
Crescent Societies*

*Chairman of the  
Standing Commission  
of the Red Cross  
and Red Crescent*

*President of the  
International  
Committee of the  
Red Cross*

**Mario Villarroel Lander**

**Ahmed Abu-Goura**

**Cornelio Sommaruga**

## REFERENCES

- Message to the International Community from the Second World Red Cross and Red Crescent Conference on Peace, held in Aaland and Stockholm from 2 to 7 September 1984.
  - Convention of 10 October 1980 on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be excessively injurious or to have Indiscriminate Effects.
    - Protocol on Non-Detectable Fragments (Protocol I);
    - Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II);
    - Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III).
  - 1977 Protocols additional to the Geneva Conventions of 12 August 1949; Protocol I, Article 35.
  - ICRC Appeal of 5 September 1945 to the Central Committee of the National Red Cross Societies regarding the end of hostilities and the future tasks of the Red Cross.
  - ICRC Appeal of 5 April 1950 to the High Contracting Parties signatory to the Geneva Conventions—Atomic Weapons and “Non-Directed” Weapons.
  - Geneva Protocol of 17 June 1925 for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases and of Bacteriological Methods of Warfare.
  - Appeal against the Use of Poisonous Gases addressed by the ICRC to the belligerents on 6 February 1918.
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## *125TH ANNIVERSARY OF THE MOVEMENT*

### **Scientific Symposium on the Precursors of the Red Cross**

On the occasion of the 125th anniversary of the International Red Cross and Red Crescent Movement, the Henry Dunant Society, in close co-operation with local and international Red Cross institutions, is organizing a Scientific Symposium in Geneva on the Precursors of the Red Cross.

The purpose of this symposium, which is to take place from 26 to 28 October in the Palais de l'Athénée, is to answer the following questions: did humanitarian sentiments exist prior to the Red Cross? Who were the women and men who, in the second half of the 19th century, shared the same concern as the Committee of Five, founding institution of the Red Cross? What humanitarian institutions existed back then?

The symposium, whose lectures and discussions are open to all, should make it possible to discover or learn more about unknown or neglected philanthropists, stimulate exchanges between historians belonging to different schools of thought and involve the public at large in the discussions.

The provisional programme for the symposium is as follows:

#### **WEDNESDAY 26 OCTOBER 2 p.m.**

Arrival of participants

**PIERRE WELLHAUSER**

President of the Council of State of the Republic and Canton of Geneva

Welcoming address

**GUY-OLIVIER SEGOND**

Mayor of the City of Geneva

Le droit humanitaire avant la fondation de la Croix-Rouge  
(Humanitarian law prior to the foundation of the Red Cross)

**FRANK B. FREIDEL**

Harvard University

Francis Lieber and the codification of the International Law of War

**BRUNO ZANOBIO**

University of Milan

Chirurgie et médecine militaires à l'aube du mouvement humanitaire  
(Military medicine and surgery at the dawn of the humanitarian movement)

Discussion and break

**DOMINIC M. PEDRAZZINI**

Federal Military Library, Bern

Conceptions et réalisations humanitaires du général Guillaume-Henri  
Dufour lors de la guerre du Sonderbund  
(General Guillaume-Henri Dufour's humanitarian ideas and  
achievements during the Sonderbund war)

**WERNER G. ZIMMERMANN**

State Archives, Zurich

Une initiative zurichoise au temps du Sonderbund  
(A Zurich initiative at the time of the Sonderbund)

Discussion

Reception hosted by the State and City of Geneva

**THURSDAY 27 OCTOBER 9.00 a.m.**

**VLADIMIR KALAMANOV**

State Institute of International Relations, Moscow

Nicolay Pirogov, médecin, savant et humaniste  
(Nicolas Pirogov, doctor, scholar and humanist)

**WALTER GRUBER**

German Red Cross in the Federal Republic of Germany, Stuttgart

La grande-duchesse Héléna Pavlovna et ses auxiliaires en Crimée  
(The Grand Duchess Helena Pavlovna and her auxiliaries  
in the Crimea)

Discussion and break

**JACQUES MEURANT**

ICRC, Geneva

Anatoli Demidoff, pionnier de l'assistance aux prisonniers de guerre  
(Anatoli Demidoff, pioneer in the provision of assistance  
to prisoners of war)

**RENÉE LELANDAIS**

Society of the Daughters of Charity of St. Vincent de Paul, Paris

Les Filles de la Charité sur les champs de bataille d'Algérie, de Crimée,  
d'Italie, du Mexique et des Etats-Unis  
(The Daughters of Charity on the battlefields of Algeria, the Crimea,  
Italy, Mexico and the United States)

Discussion

**2.30 p.m.**

**BARRY SMITH**

The Australian National University, Canberra

Florence Nightingale, the Common Soldier and International Succour

**SUE MORIARTY GOLDIE**

Manchester University

Florence Nightingale and the Crimean War: private truth  
and public myth

**JEAN GUILLERMAND**

Former military medical officer, France

La vision de la guerre de Crimée du médecin inspecteur Lucien Baudens  
(The Crimean War as seen by medical inspector Dr. Lucien Baudens)

Discussion and break

**GABRIEL MÜTZENBERG**

Evangelical Society, Geneva

Sur la lancée du Réveil, un cœur brûlant de compassion:  
Valérie de Gasparin  
(In the wake of the Réveil, a Genevan Protestant Revivalist Movement,  
a heart burning with compassion: Valérie de Gasparin)



**ANDRÉ DURAND**

Former ICRC delegate, Geneva

Informations et commentaires de la presse genevoise sur les conflits  
des années 1847-1863

(News and comments from the Geneva press on conflicts  
between 1847 and 1863)

Discussion

**FRIDAY 28 OCTOBER 9 a.m.**

**WALTER GERT RÖDEL**

University of Mainz

Croix blanche et croix rouge: le renouveau de l'Ordre de Saint-Jean  
de Jérusalem

(White cross, red cross—the revival of the Order of Saint John  
of Jerusalem)

**GIUSEPPE ARMOCIDA**

University of Milan

Louis Appia

Discussion and break

**ANDREA RUSSO**

University of Naples

Ferdinando Palasciano et la neutralisation des blessés de guerre

(Ferdinando Palasciano and conferring neutral status  
on the war wounded)

**GEORGES LUBIN**

Editor of the correspondence of George Sand, Boulogne

Henri Arrault: une priorité disputée, ou la guerre des deux Henri

(Henri Arrault: a disputed priority, or the war of the two Henrys)

Discussion

**2.30 p.m.**

**JANE TURNER CENSER**

The American University, Washington

Two paths to aiding the soldier: the US Sanitary and  
Christian Commissions

**JEAN-FRANÇOIS REYMOND**

World Alliance of Young Men's Christian Associations, Geneva

Les Unions chrétiennes de Jeunes Gens pansent les plaies pendant la  
guerre de Sécession

(The Youngs Men's Christian Associations bind up wounds during the  
War of Secession)

Discussion and break

**PATRICK F. GILBO**

American National Red Cross, Washington

Clara Barton

**ROGER DURAND**

Henry Dunant Society, Geneva

Précurseurs-fondateurs: les fils enchevêtrés de la genèse rubricrucienne  
(Precursors/founders: the complex origins of the Red Cross)

Closing ceremony

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## BOOKS AND REVIEWS

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### ESSAYS ON THE CONCEPT OF A "RIGHT TO LIVE"

*In memory of Yougindra Khushalani*

Just as peace is not simply the absence of war, but rather a dynamic process of co-operation among peoples, life is not simply the antithesis of death, but rather a period of time during which every human being should be able to develop fully in dignity and in enjoyment of the respect of others. This was the profound conviction, imbued with humanity and solidarity with the most vulnerable among us, that inspired Yougindra Khushalani, an eminent Indian lawyer and Vice President of the Association of International Consultants on Human Rights (CID), to conceive the idea of a "right to live". It is to this intelligent, highly motivated and courageous woman, whose own life ended so tragically early, that the authors of this collection of essays<sup>1</sup> pay tribute by developing the ideas that were so dear to her, each in his own special sphere of interest. All the contributors are eminent figures in the world of human rights and international humanitarian law, which she studied in depth during a period spent at the International Committee of the Red Cross.

How does the "right to live" differ from the more familiar "right to life"?

The right to life, guaranteed by numerous provisions of human rights instruments and international humanitarian law, is specifically asserted in the International Covenant on Civil and Political Rights, which permits no derogation from this right, even when an exceptional public emergency is threatening the life of a nation. As stated in Article 6 of the Covenant, it is an "inherent right" of every human being. The article goes on to say: "That right shall be protected by law. No one shall be arbitrarily deprived of his life". Several paragraphs of the same article deal with the death penalty, which is also the subject of an essay in the book, based on the preparatory work in drafting the Covenant.

The "right to live" is an extension of the "right to life". To live is more than simple existence; it implies the enjoyment of living conditions conducive to the full development of the human person. To have enough food, a home, adequate education and medical care, to be able to work under proper conditions, to move about and express oneself freely, to grow up in a healthy and

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<sup>1</sup> *Essays on the concept of a "Right to Live"*, in memory of Yougindra Khushalani, Bruylant, Brussels, 1988, 324 pp., bilingual, English and French. Daniel Prémont, general editor, Mary Tom, editor, Paul Mayenzet, co-ordinator, Association of International Consultants on Human Rights (CID).

peaceful environment where all traditions and cultures are respected; these are some aspects of the "right to live". Furthermore, during the time given him, from birth to death, every individual should be free from fear, fear of insecurity, fear of ill-treatment, torture, "disappearance", summary execution or the menace represented by the arms race. Even in wartime, indeed, particularly in such circumstances, a "margin of humanity" must be preserved thanks to international humanitarian law.

It is difficult to sum up in a few lines the rich content of this work, which covers a score of subjects such as the right to a decent environment, to development and to communications, and the issues of peace, disarmament and scientific and technological progress. Several of the problems involved in giving effect to the "right to live" are also taken up: the role that could be played by the many existing voluntary organizations in improving the quality of life, the protection of migrant workers, the impact of the "brain drain" on developing countries, the "right to live" in the African context, the right of children to be protected from death, disease and exploitation. Finally, the right to be different—from the point of view of a woman from the Third World, Yougindra Khushalani, who attached the greatest importance to the need to respect the cultural identity of peoples. The book concludes with several essays on State responsibility for the protection of the "right to live".

This publication is far from being a heterogeneous collection of mismatched opinions; it is a harmonious work which illuminates the central theme of the right to live from various angles. In this respect the task undertaken by the general editor, Daniel Prémont, has proved a success.

Is now the right time to put forward a new human right on the basis of the concept of a "right to live"? Isn't this idea in effect a synthesis of all human rights? These questions remain open, and it is up to each reader to form his own opinion. The value of this "comprehensive and evolutive" concept of human rights, to borrow the title of one section of the book, seems to us to be essentially an educational matter. As one of the authors says, work to raise young people's awareness of human rights issues must not be limited to providing them with information, but must help prepare them to live together in harmony in tomorrow's society, a society which the adults of today find it difficult to imagine. This is a major and difficult educational undertaking. An approach to the problems of the human community based on the concept of the "right to live" would help stir the awareness of children to values such as respect for life and tolerance, would open their eyes to the realities and diversity of the world and, most important, would give them a sense of their own responsibility by making them realize that solidarity among human beings is the source of collective and individual fulfilment.

*Marion Harroff-Tavel*

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## WAR AND CONSCIENCE IN THE NUCLEAR WAR

This is both a readable and thoughtful book on the ethical problems posed by war in the light of the present state of international politics and law.\* In many respects, this book is largely a reproduction of an earlier work published by the author in 1972 entitled "Prohibitions and Restraints in War". Like the earlier work, the author reviews the "Just War" doctrine in Christian ethics, its development in international law from the time of Grotius onwards, the basic rules of humanitarian law, and finally arms control and disarmament.

These subjects are expanded and updated in the later book and more emphasis is given to the section on disarmament and arms control which outlines the principal means used in these treaties to supervise or control the ownership of nuclear weapons. The major qualitative difference between the earlier work and this one is that the latter contains more thought on ethical problems, particularly on the justice of pacifism or non-pacifism and the problems arising from taking either of these stands. Although the arguments are largely based on Christian ethical norms, the discussion is of equal validity to persons of other religious or philosophical persuasions. The last chapter is a particularly interesting study of the thoughts of certain men faced with these dilemmas and the work of those who made major contributions towards the present state of law.

The book contains sufficient humanitarian law and arms control law to be used as a good introduction to these subjects, but care should be taken in certain places because the author uses the law as part of his ethical discussion and at times gives an inaccurate impression of the law itself. His assertion, for example, that there is a close connection between the "Just War" doctrine and humanitarian law is valid only in so far as one excludes those aspects of the former that relate to the *jus ad bellum* which is totally divorced from and irrelevant to humanitarian law.

In the same vein, he states that Protocol I "legitimizes" national liberation movements, which is false as humanitarian law can never legitimize any use of force and is totally neutral. In the chapter on irregular fighters and internal wars, he fails to point out that there is no combatant or prisoner-of-war status in internal conflict and incorrectly implies that Protocol I gives combatant status to all fighters who carry their arms openly. He supports this by citing only Article 44(3), thus ignoring the essential Article 43 and the general rule to distinguish from the civilian population that is reaffirmed in the first part of Article 44(3).

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\* Sydney D. Bailey, *War and Conscience in the Nuclear Age*, Macmillan Press Ltd, Houndmills, Basingstoke, Hampshire, London, 1987, 210 p.

In the chapter entitled "Human Rights in Armed Conflicts", he does not study international human rights law applicable in armed conflict, as might be thought from the title, but rather the United Nations' contribution towards the adoption of the 1977 Protocols. This chapter is misleading in that it gives the impression that the major impetus came from the UN, thus understressing the work of the ICRC in this respect.

On the subject of the Protocols, he categorizes these as the "law of Geneva" whereas, as he pointed out himself, this is a term of art describing the law on the protection of victims. Much of the Protocols in fact relate to the "law of the Hague" i.e. the law on the conduct of hostilities.

In conclusion, this book cannot be used as a legally accurate textbook on humanitarian law, but it is to be recommended as a thought-provoking introduction to this area of law, not only for its philosophical analysis but also for its historical background and overview of the law in today's world.

*Louise Doswald-Beck*

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### **New publication**

#### ***INDEX ON THE TEACHING OF INTERNATIONAL HUMANITARIAN LAW IN ACADEMIC INSTITUTIONS***

(Ed.: Danuta Zys, Christine Seydoux, Inge Bracke) Henry Dunant Institute, Geneva, 1987, 2 vols. (published in three languages: *English, French and Spanish*). This index provides a basic list of universities and other academic institutions that give courses on international humanitarian law or plan to include such courses in their future programmes.

It is composed of two loose-leaf binders providing details on each of those institutions and information on current and planned international humanitarian law curricula. It also describes the assistance that each university or institution would like to receive from the International Red Cross and Red Crescent Movement at the national and/or international levels.

The *Review* will be commenting on this major publication in its next issue.

## ADDRESSES OF NATIONAL RED CROSS AND RED CRESCENT SOCIETIES

- AFGHANISTAN (Democratic Republic of) — Afghan Red Crescent Society, Puli Hartan, *Kabul*.
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A revised and enlarged edition of the *Index of the Geneva Conventions for the Protection of War Victims of 12 August 1949*. The Washington College of Law, American University. Editors: Waldemar A. Solf, Adjunct Professor/Senior Fellow, Washington College of Law Institute, and J. Ashley Roach, Captain, Judge Advocate General's Corps, US Navy, 284 pp., format 16 × 23 cm. Price: Sfr. 20.— or US\$ 15 (*in English*).

### ● **Handbook on the Law of War and the Armed Forces**

by Frédéric de Mulinen

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The work, which was originally conceived for senior officers and staff members, is supplemented by a *Summary for Commanders* (containing no reference to law) and the *Rules for Behaviour in Action*, which is meant to be used as a teaching aid. These supplementary sections also exist as an offprint (16 pp.).

This handbook has 256 pages and its format is 15.5 × 23 cm. *French* and *Spanish* versions are planned. Price: Sfr. 20 or US\$ 15.

### ● **“The ICRC worldwide”**

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(since May-June 1988)

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# INTERNATIONAL REVIEW

## Refugees and Conflict Situations

